

2543

No. 11991

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALVA G. BLANCHARD,

Appellant,

vs.

J. L. PINKERTON, INC., and J. L. PINKERTON,

Appellees.

TRANSCRIPT OF RECORD

(In Two Volumes)

VOLUME I

(Pages 1 to 312, Inclusive)

Upon Appeal From the District Court of the United States
for the Southern District of California

Central Division

FILED

OCT 26 1948

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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and

WILLIAM C. BABCOCK

Long Beach, Calif. [1*]

In the District Court of the United States in and for the
Southern District of California
Central Division
Civil No. 7734-Y

Complaint for Infringement of United States
Letters Patent Nos. 2,199,611 and 2,233,395

ALVA G. BLANCHARD,

Plaintiff,

vs.

J. L. PINKERTON, INC., a corporation, and
J. L. PINKERTON,

Defendants.

BILL OF COMPLAINT

Comes now the plaintiff in the above entitled suit and files this his bill of complaint against the defendants herein, and for cause of action alleges that:

I.

This is an action arising under the patent laws of the United States and this Court has jurisdiction thereunder.

II.

On May 7, 1940, United States Letters Patent No. 2,199,611 were duly and regularly issued for an invention and improvement in "Valve Operating Structures"; and on May 4, 1941, United States Letters Patent No. 2,233,395 were duly and legally issued for an invention in "Safety Apparatus for Boilers"; and plaintiff is the owner of those Letters Patents and all [2] rights thereunder.

III.

Without the license or consent of plaintiff, and in infringement of said Letters Patent, and each thereof,

the above named defendants have jointly and severally, or jointly or severally, for some time past, and at divers and sundry times within the six years last past, within the said Southern District of California, Central Division thereof, and elsewhere, the extent of which is to plaintiff unknown, prior to the commencement of this suit, manufactured, offered for sale, sold, offered for use, used and caused to be used Valve Operating Structures and Safety Apparatus for Boilers embodying and containing the said patented inventions disclosed in and by said Letters Patents, and have thereby infringed upon said Letters Patents, and threaten and intend to continue to do so unless enjoined therefrom by this Court.

IV.

Plaintiff has placed the required statutory notice on all Valve Operating Structures and Safety Apparatus for Boilers sold by him under said Letters Patents, and has given written notice to defendants of their said infringement.

Wherefore, plaintiff demands a final injunction against further infringement by defendants and those controlled by defendants, an accounting for profits and damages, and an assessment of costs against said defendants.

ALVA G. BLANCHARD

Plaintiff

HAMER H. JAMIESON

Attorney for Plaintiff

[Endorsed]: Filed Oct. 31, 1947. Edmund L. Smith,
Clerk. [3]

[Title of District Court and Cause]

ANSWER

Come now the defendants, J. L. Pinkerton, Inc., a corporation, and J. L. Pinkerton individually, the defendants above-named and for answer to the complaint on file herein, admit, deny and allege as follows:

I.

Defendants deny generally and specifically each and every allegation contained in paragraphs II, III and IV of said complaint except that said patents were issued by the Commissioner of Patents and notice of alleged infringement thereof was given to defendants.

As Further and Affirmative Defenses Defendants Allege:

II.

That said patents Nos. 2,199,611 and 2,233,395 and all of the [4] claims thereof are invalid for lack of novelty because:

A. The subject matter claimed in said patents had, long prior to the alleged invention thereof by plaintiff or more than two years prior to his applications for said patents, been described in various United States and foreign patents and in various publications among which are the following:

United States

Patentee	Patent No.	Date
Wyatt	105,289	July 12, 1870
Amundsen	227,145	May 4, 1880
House	521,166	June 12, 1894
Parsons	590,905	Sept. 28, 1897
Wright	668,302	Feb. 19, 1901
Baldwin	716,982	Dec. 30, 1902
Williams	728,348	May 19, 1903
Humphrey	796,516	Aug. 8, 1905
Timm	1,055,000	Mar. 4, 1913
Fulton	1,131,690	Mar. 16, 1915
Elger	1,214,443	Jan. 30, 1917
Brown	1,584,007	May 11, 1926
Smith	1,629,055	May 17, 1927
Roberts	1,694,626	Dec. 11, 1928
Fisher	1,754,013	Apr. 8, 1930
Viberg	1,957,087	May 1, 1934
Parker	1,965,052	July 3, 1934
Slagel	1,986,376	Jan. 1, 1935

Foreign Patents

Great Britain

Weir et al.	429,070	May 23, 1935
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France

	375,308	July 5, 1907
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B. The subject matter claimed in said patents had, long [5] prior to the alleged invention thereof by plaintiff been known and used in the United States by the applicants for the patents listed in Paragraph A above at the addresses set forth in said patents, by the authors and publishers of the publications listed in Paragraph A above

at the addresses set forth in said publications, and by many other persons whose names and addresses are at present unknown to defendants but for which they are causing diligent search to be made.

C. The subject matter claimed in said patents had, long prior to the alleged invention thereof by plaintiff, or more than two years prior to his application for said patents, been in public use or on sale in the United States by the applicants for the patents listed in Paragraph A above at the addresses set forth in said patents, by the authors and publishers of the publications listed in Paragraph A above at the addresses set forth in said publications, and by many other persons whose names and addresses are at present unknown to defendants but for which they are causing diligent search to be made.

III.

That said Patents Nos. 2,199,611 and 2,233,395 and all claims thereof are invalid for lack of invention because:

A. Each and every element and feature disclosed in said patents as well as the use, function and effect thereof, both singly and in diverse associations and combinations, was well known in the art long prior to the alleged invention thereof by plaintiff and the conception and production of the subject matter claimed in said patents did not amount to invention but was nothing more than the exercise of the ordinary and expected skill of persons familiar with the art to which said patents relate.

B. The alleged inventions claimed in said patents are not patentable combinations but are mere aggregations of old elements and parts which do not cooperate in any new or unexpected way or produce any new or unexpected result.

C. Said claims and each of them fail to describe a statutory [6] subject of invention in that they do not describe any new or useful art, machine, manufacture or composition of matter but on the contrary merely set forth an attempt to patent a function or result.

IV.

That said Patents Nos. 2,199,611 and 2,233,395 and all claims thereof are invalid for failure to comply with the provisions of R. S. 4888 (35 USC 33) in that:

A. Neither the alleged inventions claimed in said patents nor the manner of making or using the same are described in said patents in such full, clear, concise or exact terms as to enable any person skilled in the art to which it appertains to make or use the same.

B. Said claims do not particularly point out and distinctly claim the part, improvement or combination which the applicant therefor claims as his invention or discovery.

V.

That said Patents Nos. 2,199,611 and 2,233,395 and all claims thereof are invalid because the subject matter of said claims was not the sole invention of plaintiff but was the joint invention of plaintiff and others, which fact was well known to plaintiff at the time he filed his applications for said patents.

VI.

That said Patents Nos. 2,199,611 and 2,233,395 and all claims thereof were so limited by requirement of the Commissioner of Patents during the prosecution of said patents as not to be susceptible of a construction which will include any device or apparatus now being made, used or sold by defendants.

COUNTERCLAIM

By way of counterclaim against plaintiff herein these defendants allege:

VII.

That said Patents Nos. 2,199,611 and 2,233,395 and all claims [7] thereof are invalid for the reasons heretofore set forth in Paragraphs II to VI, inclusive, of this Answer and defendants hereby replead and incorporate said paragraphs herein by reference the same as though set forth herein in full.

VIII.

That no structure made, used or sold by defendants or either of them prior to the filing of the Complaint herein infringed any claim of either of said Patents Nos. 2,199,611 and 2,233,395.

IX.

That there is therefore a controversy existing between plaintiff and the defendants in this action which under 28 USC 400 is cognizable by this Court and should be litigated as a counterclaim in this action.

Wherefore defendants pray:

1. That Patent Nos. 2,199,611 and 2,233,395 and all claims thereof be adjudged invalid and void,
2. That defendants and each of them be adjudged not to have infringed either of said Letters Patent or any claim thereof,
3. That the Complaint on file herein be dismissed with costs to the defendants, including their attorneys' fees incurred herein,

4. For judgment on the counterclaim filed herewith that defendants have not, prior to the filing of said counterclaim, infringed said Letters Patent or either of them, and
5. For such other and further relief as to this Court shall seem just and proper. [8]

Dated at Los Angeles, California, this 22nd day of December, 1947.

ROBERT W. FULWIDER and
WILLIAM C. BABCOCK

By Robert W. Fulwider

Attorneys for Defendants [9]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Dec. 23, 1947. Edmund L. Smith,
Clerk. [10]

[Title of District Court and Cause]

STIPULATION THAT PLAINTIFF MAY FILE
REPLY TO COUNTERCLAIM IN ANSWER

It Is Hereby Stipulated by and between the parties in the above entitled case, through their respective counsel, that the plaintiff herein may file his reply to the counterclaim in the defendants' answer provided said reply is filed on or before March 29, 1948.

Dated at Los Angeles, California, this 26th day of March, 1948.

HAMER H. JAMIESON

Attorney for Plaintiff

ROBERT W. FULWIDER

Attorney for Defendants

It is so ordered this 29th day of March, 1948.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Mar. 30, 1948. Edmund L. Smith,
Clerk. [11]

[Title of District Court and Cause]

REPLY

Comes now the plaintiff in the above entitled suit and files this his reply to the counterclaim in the Answer on file herein and for reply to said counterclaim admits, denies and alleges as follows:

I.

Plaintiff denies generally and specifically each and every allegation contained in paragraphs VII, VIII and IX of the counterclaim in the said Answer.

Wherefore, plaintiff prays that the prayer of the Complaint herein be granted and a final injunction against further infringement by defendants and those controlled by defendants, an accounting for profits and damages, and an assessment of costs against said defendants be ordered.

HAMER H. JAMIESON

Attorney for Plaintiff [12]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 26, 1948. Edmund L. Smith,
Clerk. [13]

[Title of District Court and Cause]

MEMORANDUM DECISION

Appearances:

Hamer H. Jamieson, Los Angeles, California, for the Plaintiff.

Robert W. Fulwider and William G. Babcock, Los Angeles, California, for the Defendant. [14]

The above-entitled cause heretofore tried, argued, and submitted, is now decided as follows:

(A) As to the Complaint, judgment will be for the defendants that plaintiff take nothing by his Complaint against the defendants or either of them.

(B) As to the counterclaim, judgment and declaration will be entered as follows: (1) That the patent covered by U. S. Letters Patent No. 2199611, issued on May 7, 1940, and patent covered by U. S. Letters Patent No. 2233395, issued on May 4, 1941, are, and each of them is, valid; and (2) that none of the claims are, or were, infringed by the devices made, used or sold by the defendants, or either of them, prior to the filing of the Complaint.

(C) The defendants are allowed their costs and disbursements herein, but no attorney's fees.

COMMENT

By the Complaint, the plaintiff seeks injunction, profits and damages by reason of alleged infringement of the claims of the devices covered by the two patents just referred to. Neither structure is of great complexity. The actual trial of the case consumed less than three days. In addition to trial memoranda, exhaustive briefs have

been filed, covering a total of 270 pages, with plaintiff's opening and closing briefs filling 189 pages. They have received full consideration. [15]

The decision announced states the Court's ultimate conclusions upon the issues presented by the pleadings. In what follows will be indicated, in greater detail, some of the legal bases for the conclusions.

As this is not a full-length opinion, I shall not undertake to discuss in detail all the legal principles urged by the parties to this action. Our aim is merely to indicate, as a guide to counsel in the preparation of findings, the conclusions upon some of the legal and factual foundations which underlie the decision.

I.

Letters Patent No. 2233395

A.

Much of the argument, in so far as it relates to this patent, expounds accepted norms, such as that a pioneer patent is entitled to a broad interpretation of its claims. We have no quarrel with this principle. The specifications designate the scope of the patent:

"This invention relates to improvements in safety devices for boilers."

When dealing with an improvement patent, the structure claimed must be considered in the light of the prior art as it relates to devices in the same field, which, in this case are "safety devices for boilers." The claims must be limited to the "improvements." The specifications may be resorted to in order to resolve ambiguities. They may limit, but they cannot enlarge the claims. [16]

But in the last analysis, if there be infringement, it is the claims that are infringed and not the specifications. And when we are dealing with an "improvement" of a structure which existed before, the patentee is entitled only "to the precise device described and claimed in his patent." (*Boyd v. Janesville Hay-Tool Co.*, 1894, 158 U. S. 260, 267. And see, *McClain v. Ortmyer*, 1891, 141 U. S. 419, 425; *Pacific States Electric Co. v. Wright*, 1922, 9 Cir., 277 Fed. 756; *Keystone Driller Co. v. Northwest Engineering Corp.*, 1935, 294 U. S. 42; *Parrafine Co. v. MacEverlast, Inc.*, 1936, 9 Cir., 84 F. (2) 835; *H. Brinton Co. v. Mishcon*, 1937, 2 Cir., 93 F. (2) 445, 448; *Williams Co. v. Shoe Machinery Corp.*, 1942, 316 U. S. 364, 368-368.)

There is another important consideration. A greater liberality of interpretation of claims obtains, and a greater range of equivalents is allowed, when we are dealing with a patent which has been reduced to practice successfully than when we are dealing with what we call "paper" patents. (See my opinion in *Mantz v. Kersting*, 1939, D. C. Cal., 29 Fed. Sup. 706, 712.) However, great commercial success, in itself, is not a criterion either in determining whether there was invention, or in arriving at its scope. (*McClain v. Ortmyer*, 1891, 141 U. S. 419, 428; *Klein v. City of Seattle*, 1896, 9 Cir., 77 Fed. 200, 204; *Grayson Heat Control v. Los Angeles etc. Co.*, 1943, 9 Cir., 134 F. (2) 478, 481; *Marconi Wireless Co. v. U. S.*, 1943, 320 U. S. 1, 20.) [17]

If the prior art which has been pressed upon the court as a ground for invalidity be considered in the light of these principles, it is evident that, while some of the elements contained in the patented structure are in the

others. the claims here would not read upon any of the references or on the best references: Parker Patent No. 1965052; Sutherland Patent No. 1209355; Horridge Patent No. 930860; Spiller Patent No. 229644; House Patent No. 521166; Baldwin Patent No. 716982. Some of the results achieved by the patent in suit are also obtained by the structures referred to. But, essentially, they are different in that they do not achieve the primary purpose of the present patent, which is automatic safety. Nor do they operate on the same principles. (See *Los Alamitos Sugar Co. v. Carroll*, 1909, 9 Cir., 173 Fed. 280, 284.) Thus taking the measure of the invention from the claims as described, but not enlarged, in the specifications and depicted and exemplified in the drawings, the claims are valid.

B.

By the same token, however, none of the claims is infringed by the devices manufactured by the defendants. This conclusion applies equally to the 1932-1933 construction and installation and to the structures manufactured for general commercial use subsequent to that date. The use of the 1932 structure was not pleaded as a defense, and cannot be considered as anticipation. (35 U. S. C. S. 69(5); and see, [18] *Electric Battery Co. v. Shimadzu*, 1939, 307 U. S. 5, 17.) However, such use may, together with the prior art as disclosed by prior patents in the field, be relied on to show want of invention. Such use may prove lack of invention or limit its scope. (*Parrafine*

Co. v. MacEverlast, Inc., 1936, 9 Cir., 84 F. (2) 335; *Oswell v. Bloomfield*, 1940, 7 Cir., 113 F. (2) 377.)

The evidence in the case shows conclusively the installation late in 1932, or early in 1933,—that is prior to the Blanchard application, which is dated October 14, 1935,—of a structure of the type of the accused device. The record furnishes the details of the structure through the testimony of the defendant and of disinterested persons who took part in its construction and installation, at Seal Beach, California. While evidence of prior use must be clear and satisfying, it need not rise to mathematical certainty. (See, *Radio Corporation v. Radio Laboratories*, 1934, 293 U. S. 1, 7-8; *Marconi Wireless Co. v. United States*, 1943, 320 U. S. 1, 34; *Parrafine Companies v. MacEverlast, Inc.*, 1936, 9 Cir., 84 F. (2) 335, 339-340.) The plaintiff argues that the 1932 structure did not anticipate the patented structure. Yet he insists that the accused devices as constructed after the date of the Blanchard application was filed, infringes.

There is a formula which, so far as can be ascertained,—is traceable to *Peters v. Active Mfg. Co.*, 1884, Circuit Court, Ohio, 21 Fed. 319, 321;—and which teaches that “that which infringes, if later, would anticipate, if earlier.” [19]

But as is the case with all laconic formulas, it does not necessarily cover all situations. Recent writers have said so. (*Walker on Patents*, Deller’s Ed., 1937, Vol. I, Sec. 48, pp. 256-257.) However, in the application of the apothegm, the converse is also true. (*Shakespeare Co. v.*

Perrine Mfg. Co., 1937, 8 Cir., 91 F. (2) 199, 202.) The accused devices, subsequent to 1932, are, so far as the record shows, substantially the same as,—if not identical,—with the former device. And even if it be conceded, as contended by plaintiff, that they achieve the same result, there is no substantial identity in components or their equivalents. Absent this, there is no infringement. (Pacific States Electric Co. v. Wright, 1922, 9 Cir., 277 Fed. 756; R. H. Burke v. Brauer Bros., 1928, 8 Cir., 33 F. (2) 838, 840-841; Irvin v. Buick Motor Co., 1937, 8 Cir., 88 F. (2) 947, 951-952; Shakespeare v. Perrine Mfg. Co., *supra*, p. 202; and see Mantz v. Kersting, *supra*, pp. 709-710.)

II.

Letters Patent No. 2199611

The conclusion reached that there is no infringement of Patent No. 2199611 requires little, if any, elaboration. As in Letters Patent No. 2233395, the number of claims is limited, five in all. Infringement is claimed as to Claims 1, 2, and 5. This application was the result of a requirement of the patent office that the structure of the valve operating device be covered by a separate application. [20]

I am of the view that limited to the structure claimed, the patent is valid and is not anticipated by any of the prior art, such as Baldwin Patent No. 716982; Wright Patent No. 668302; Singleton Patent No. 7767; Humphrey Patent No. 796516; and Wyatt Patent No. 105289.

(See my opinion in *Joyce, Inc. v. Solnit*, 1939, 29 Fed. Sup. 787.)

The device is intended for use in conjunction with the operation of valves and outlets for steam boilers. More particularly, it aims to permit the valves to be opened sequentially in case several steam outlets are used. It is evident that the claims call for a single pin operating a plurality of valves and comprise a plurality of aligned needle valves each with a slot in its valve stem. The slots are of different sizes and a cross pin passes through them all. The float lever by which the pin is operated allows the valves to be opened sequentially. The accused devices do not have slots of different sizes in their valves, nor do they have a single pin extending through slots in the valve stems or operating both valves. Pinkerton also uses two separate pins located at two different places, to operate two separate valves in different manners. So, admitting that the result is the same, the means by which it is achieved are so dissimilar from those of the patent in suit as to prevent, under the authorities already cited, a finding of infringement. (See, *Standard Mirror Co. v. Brown*, 1940, 7 Cir., 113 F. (2) 379, 380.) [21]

Hence the conclusions above announced.

Dated this 13th day of May, 1948.

LEON R. YANKWICH

Judge

[Endorsed]: Filed May 13, 1948. Edmund L. Smith,
Clerk. [22]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause having come on regularly for trial upon the issues raised by the Complaint, Answer and Counterclaim, and oral, documentary and physical evidence having been introduced, and the Court having fully considered the same together with the briefs of counsel, the Court makes the following Findings of Fact and Conclusions of Law, to-wit:

FINDINGS OF FACT

1.

The plaintiff, Alva G. Blanchard, is the owner of United States Patents No. 2,233,395 issued May 4, 1941, hereinafter referred to as the '395 patent, and No. 2,199,611 issued May 7, 1940, hereinafter referred to as the '611 patent. The application for the '611 patent was a division of the application for the '395 patent, and [23] the filing date of the latter, to-wit, October 14, 1935, is therefore the effective filing date for each of said patents.

2.

No evidence except unsupported oral testimony of plaintiff was introduced to show invention of either of said patents prior to said effective filing date. ~~Said evidence was neither definite nor persuasive and~~ [LRY/J] Therefore, plaintiff is restricted to his said filing date of October 14, 1935 as the date of invention for each of said patents.

3.

The specification of the '395 patent defines the invention as an improvement in safety devices for boilers,

which, in view of the prior art must be limited to a safety device for boilers which produce automatic safety.

4.

The claims of the '395 patent all describe and must be specifically limited to the fuel valve assembly described in the specification and depicted in the drawings. Claims 2 and 3 are by their terms limited to "non-return means to prevent back-flow of fluid from said compartment." The only "non-return means disclosed or contemplated in said patent is the check valve 79 seen in Figure 6, and the claims are limited thereto. Claim 1, although it does not specifically recite the non-return means of claims 2 and 3, must, in view of the specification and prior art be considered to include said check valve 79 by reference. As so limited said claims are valid. ~~Unless so limited said claims are invalid.~~ [LRY/J]

5.

The automatic safety of the '395 patent apparatus is achieved [24] by the action of the check valve 79, which holds the fuel valve 75 closed until the relief valve 78 is manually opened. This function of the check valve can only be accomplished by placing it below the level of the liquid standing in compartment 72 and the inlet to said compartment, so that when the check valve closes, it will trap only liquid in said compartment. Thus when the check valve has been closed the fuel valve 75 is locked in closed position, and can only be opened by manually opening relief valve 78 to permit the springs 77 to force diaphragm 73 upwardly to expel liquid from compartment 72.

6.

Every element of the '395 claims is shown by the prior art patent to Parker No. 1,965,052 except the feature of locating the check valve 79 below the liquid level in the inlet means to compartment 72. The House Patent No. 521,166 shows each and every element of said claims except the check valve, i. e., the non-return means. [LRY/J]

7.

The element appearing in all of said '395 claims, "means for supplying fluid under pressure to said compartment" must be read in the light of the specification to include any conduit means such as pipe 25a shown in the Blanchard drawings, and hence finds its full equivalent in the prior art structures. There is nothing in the specification or file wrapper to indicate that this element should be limited to any particular means such as valves, floats or other mechanism. [LRY/J]

8.

The piston operated valves of the prior art patents to Parker, House, Horridge, Spiller and Ferrari are all the full equivalent of both the Blanchard diaphragm-operated valve, the [25] Pinkerton eup type piston valves, and the diaphragm-operated valves shown in the prior art patents to Williams, Fulton, Doble and Stanley. It is immaterial insofar as the Blanchard structure and claims are concerned, whether the diaphragm or equivalent piston structure, operates a fuel shut-off valve, a steam valve or a water valve. [LRY/J]

9.

Further with respect to the prior art patents it is found that:

- (a) The Parker patent shows apparatus which completely shuts off the fuel to the boilers by the closing of valve 34 and shows means, to wit, the weight 35, for yieldingly holding said valve open.
- (b) The Spiller patent shows a manual relief for the fluid pressure in the cylinder disclosed therein, in the orifice R to which a relief cock can be fastened. [LRY/J]

10.

The evidence shows conclusively that in late 1932 or early 1933 the defendant Pinkerton manufactured, and installed on a lease of the Continental Oil Company at Seal Beach, California, the boiler alarm and fuel valve control structures shown in Defendants' Exhibits E, E-1, E-2, F, F-1, F-2, F-3, F-4, and O. The details of said structures are shown by said exhibits and were fully identified through the testimony of defendant Pinkerton and of disinterested witnesses Brown, Thornton and Dolarheid, all of whom took part in said installation at Seal Beach, the manufacture of said apparatus being conclusively shown by disinterested witnesses Harvill, Beck and Robson. The testimony of all of said witnesses in all respects is found to be clear, satisfying and convincing beyond any reasonable doubt. The dates on the drawings illustrating Exhibits E and F are [26] found to have been fully proved.

11.

The accused devices manufactured by defendant Corporation are substantially the same as ~~if not identical~~

with, [LRY/J] the early devices manufactured by Pinkerton and installed in the said Continental Seal Beach lease in late 1932 or early 1933, and insofar as the claims of the Blanchard '395 patent are concerned, said devices are identical. Both the 1932-33 devices and the accused devices included in a safety apparatus for boilers, the combination of a fuel supply conduit, a valve in said conduit, means for yieldingly holding said valve open, a cylinder, a piston responsive to pressure in said cylinder arranged to close said valve, means for supplying fluid under pressure to said cylinder to force said fluid against the piston, and a manually operable valve to relieve the fluid pressure in said cylinder, said piston having a body of liquid thereon as a result of condensation of the steam in the inlet line. Neither of said devices employed or employs a check valve or any other device, structure or means which can respond to or be considered the equivalent of, the "non-return means" recited in claims 2 and 3 of said '395 patent.

12.

None of the claims of the '395 patent are or have been infringed by any device or apparatus made, used or sold by the defendants or either of them prior to the filing of the Complaint herein. If any of said claims is expanded sufficiently to be interpreted as infringed by any structure of the defendants, then said claim would by such construction be directly anticipated by and invalid over the prior art of record, and in particular the prior patents to Parker and House. [LRY/J] [27]

13.

The device of the '611 patent is intended for use in conjunction with the operation of valves and outlets for steam boilers, and aims to permit the valves to be opened

sequentially in case several steam outlets are used. Each of the claims in suit calls for and is limited to a single cross-pin operating a plurality of aligned needle valves, each with a slot in its valve stem, the slots being of different size and the valves being operated by a float lever. Each of the claims must be strictly limited to the precise structure illustrated in the patent, and as so limited is valid. ~~but if not so limited is invalid.~~ [LRY/J]

14.

All of the features and elements of the '611 claims in suit are shown in the prior art patents in evidence except the single feature of a single cross-pin extending through a plurality of different sized slots in aligned valve stems. [LRY/J]

15.

The prior art patents to Baldwin, Wright, Singleton and Humphrey anticipate each of the '611 claims in suit unless said claims are strictly limited to slots in the valve stems and a single cross-pin extending through said slots. Insofar as the claims of said patent are concerned, it is immaterial in a pin and slot linkage which element does the operating and which is operated, the interchangeability of these parts being conventional. [LRY/J]

16.

Both the Singleton and Wright patents show a plurality of outlet passages as these words are used in the '611 claims, and a plurality of valves. [LRY/J] [28]

17.

The accused devices of defendants do not have slots of different sizes in their valves, nor do they have a single pin extending through slots in the valves or their

valve stems. The defendants' structure uses separate pins located at two different places to operate two separate valves in a manner different from that disclosed or claimed in said '611 patent.

18.

The combination of the loose ring 52 pivotally connected to the valve shown in Exhibit D is not the equivalent of a valve stem and slot as shown or claimed by the '611 patent, nor is it the equivalent of such a valve and slot in two parts. The separate pins of the accused structures are not the equivalent of the cross-pin shown or claimed in the '611 patent. Said pins of defendants do not comprise and may not be considered to be the equivalent of a single pin in two parts.

19.

The means employed in the accused devices for achieving sequential operation of the valves therein are entirely dissimilar from those shown in the '611 patent, and consequently none of the '611 claims are or have been infringed by any devices made, used or sold by the defendants or either of them prior to the filing of the Complaint herein.

20.

Unless the claims in suit of the '611 patent are strictly construed as previously found they are invalid for lack of invention over the Pinkerton's 1932-33 structure shown in Exhibit F in view of the prior art patents and the Reliance Valve Exhibit A. [LRY/J] The accused devices are merely normal variations of the Reliance valve [29] and the early Pinkerton structure open to any member of the general public.

CONCLUSIONS OF LAW

1.

Claims 1, 2 and 3 of the Blanchard Patent No. 2,233,395 and claims 1, 2 and 5 of Blanchard Patent No. 2,199,611 are valid.

2.

None of the claims of either of said patents in suit is infringed by any structure or device made, used or sold by Defendants or either of them prior to the filing of the Complaint herein.

3.

The Complaint should be dismissed and the Counterclaim to the extent that it prays for invalidity of said patents should be dismissed.

4.

Defendants should be allowed their costs and disbursements herein but no attorneys fees.

Dated this 7th day of June, 1948.

LEON R. YANKWICH

United States District Judge

Approved as to form:

.....
HAMER H. JAMIESON
Attorney for Plaintiff

[Endorsed]: Lodged May 28, 1948. Filed Jun 7, 1948.
Edmund L. Smith, Clerk. [30]

In the United States District Court
Southern District of California

Central Division

Civil No. 7734-Y

ALVA G. BLANCHARD,

Plaintiff,

vs.

J. L. PINKERTON, INC., et al.,

Defendants.

JUDGMENT

This cause having come on to be heard and evidence having been introduced and briefs filed, and the Court having considered the same and having made and entered its Findings of Fact and Conclusions of Law herein,

It Is Hereby Ordered, Adjudged and Decreed as Follows:

1.

That plaintiff is the owner of United States Patents No. 2,233,395 and 2,199,611.

2.

That claims 1, 2 and 3 of Patent No. 2,233,395 and claims 1, 2 and 5 of Patent No. 2,199,611 are valid. [31]

3.

That none of the claims in suit of either of the above-mentioned patents is infringed by any device made, used

or sold by either of the defendants herein prior to the filing of the Complaint, and said Complaint is hereby dismissed. The Counterclaim filed by defendants insofar as it prays for a decree of invalidity of said patents is also dismissed. Defendants shall recover and have execution for their costs and disbursements herein in the amount of \$170.73.

Dated at Los Angeles, California, this 7th day of June, 1948.

LEON R. YANKWICH
United States District Judge

Approved as to form:

HAMER H. JAMIESON

Attorney for Plaintiff

Judgment entered Jun. 7, 1948. Docketed Jun. 7, 1948. C. O. Book 51, page 150. Edmund L. Smith, Clerk; by John A. Childress, Deputy.

[Endorsed]: Lodged May 28, 1948. Filed Jun. 7, 1948. Edmund L. Smith, Clerk. [32]

[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS UNDER RULE 73(b)

Notice is hereby given that Alva G. Blanchard, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the 9th Circuit from those parts of paragraph 3 of the Judgment entered in this action on June 7, 1948 which order, adjudge and decree that none of the claims in suit of either Patent No. 2,199,611 or Patent No. 2,233,395 is infringed by the accused devices like Plaintiff's Exhibit 12 herein, or by the accused devices shown in Plaintiff's Exhibit 11 herein, or by the accused devices shown on the right hand side of each of Plaintiff's Exhibits 8, 9 and 10 herein that were made, used or sold by either of the defendants herein prior to the filing of the complaint herein, and from those parts of paragraph 3 of the said Judgment entered in this action [33] on June 7, 1948 which order, adjudge and decree that the complaint herein is dismissed and that the defendants shall have execution for their costs and disbursements herein.

Dated July 7, 1948.

HAMER H. JAMIESON

Attorney for Appellant Alva G. Blanchard

Address: Security Building, Los Angeles 13,
California

[Endorsed]: Filed & md. copy to R. W. Fulwider,
Atty. for Defn. Jul. 7, 1948. Edmund L. Smith,
Clerk. [34]

Bond No. 59573

The Premium charged for this
Bond is \$10.00 per annum

In the United States District Court in and for the
Southern District of California
Central Division
Civil No. 7734-Y

ALVA G. BLANCHARD,

Plaintiff,

vs.

J. L. PINKERTON, INC., a corporation, and
J. L. PINKERTON,

Defendants.

COST BOND ON APPEAL

Know All Men By These Presents:

That we, Alva G. Blanchard and National Automobile and Casualty Co., as surety, are held and firmly bound unto J. L. Pinkerton, Inc., a corporation and J. L. Pinkerton, defendants, in the above styled and numbered cause, in the sum of Two Hundred Fifty (\$250.00) Dollars, lawful money of the United States, to be paid to them and their successors and assigns; to which payment well and truly be made we bind ourselves, and each of us, jointly and severally, and each of our successors and assigns by these presents.

Executed and dated this 24th day of June, A. D.,
1948. [35]

Whereas, the above named Alva G. Blanchard has prosecuted an appeal to the Honorable United States

Circuit Court of Appeals for the Ninth Circuit to reverse part of the judgment of the District Court for the Southern District of California, Central Division in the above entitled cause,

Now, Therefore, the condition of this obligation is such that if the above named Alva G. Blanchard shall prosecute his said appeal to effect and answer all costs if he fails to make good his plea, then this obligation shall be null and void; otherwise to remain in full force and effect.

(Seal) ALVA G. BLANCHARD
NATIONAL AUTOMOBILE AND
CASUALTY INSURANCE CO.

By Lloyd H. Johnston

Attorney in Fact

State of California, County of Los Angeles—ss.

On this 24th day of June, in the year 1948, before me, Loraine G. Winston, a Notary Public in and for said County and States, personally appeared Lloyd H. Johnston, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the National Automobile and Casualty Insurance Co., and acknowledged to me that he subscribed the name of the National Automobile and Casualty Insurance Co., thereto as surety, and his own name as Attorney-in-Fact.

(Seal)

LORAIN G. WINSTON

Notary Public in and for Said County and State

My Commission Expires July 4, 1949

The foregoing bond is approved this 25th day of July, 1948.

LEON R. YANKWICH
District Judge [36]

[Verified.]

[Endorsed]: Filed Jul. 7, 1948. Edmund L. Smith,
Clerk. [37]

[Title of District Court and Cause]

ORDER UNDER RULE 75(i)

Good Cause Appearing Therefor, it is hereby ordered that, pursuant to Federal Rule of Civil Procedure Number 75(i) all of the original papers and exhibits specified by the parties in the appeal in the above case shall be sent to the Circuit Court of Appeals for the Ninth Circuit in lieu of copies, by the Clerk of this Court and shall be returned to the Clerk of this Court by the Clerk of said Appellate Court after the appeal herein is heard.

Dated at Los Angeles, California, this 12th day of July, 1948.

PAUL J. McCORMICK
U. S. District Judge

[Endorsed]: Filed Jul. 12, 1948. Edmund L. Smith,
Clerk. [45]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 47, inclusive, contain full, true and correct copies of Complaint; Answer; Stipulation and Order that Plaintiff May File Reply to Counter-Claim in Answer; Reply; Memorandum Decision; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Cost Bond on Appeal; Statement of Points Under Rule 75(d); Praeceptum for Transcript of Record; Order Under Rule 75(i) and Counter-Designation of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on April 1, 2 and 5, 1948 and the original exhibits defendants' A to O, inclusive and plaintiff's 1 to 13, inclusive, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$12.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 26 day of July, A. D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

[Title of District Court and Cause]

Honorable Leon R. Yankwich, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Thursday, April 1, 1948

Appearances:

For the Plaintiff: Hamer H. Jamieson, Esq.

For the Defendants: Robert W. Fulwider, and William C. Babcock, by Robert W. Fulwider, Esq. [1*]

* * * * *

The Court: Go ahead.

Mr. Jamieson: With regard to the stipulations, it is stipulated by the plaintiff, and I understand by the defendant, that the plaintiff has title to and owns all rights under both patents in suit, Nos. 2,199,611 and 2,233,395. [11] Is that right?

Mr. Fulwider: We so stipulated.

Mr. Jamieson: Secondly, it is stipulated that the sketches of the defendants' devices illustrate valve operating devices and safety apparatus that were made and sold by the defendant corporation herein within the Southern District of California, Central Division, and elsewhere, before the complaint was filed: subject to the correction of any inaccuracies that may later be shown to exist.

Mr. Fulwider: Pardon me. Would you state that again?

Mr. Jamieson: If you want me to, yes. The sketches of the defendants' devices, those are the ones shown in

*Page number appearing in original Reporter's Transcript.

the enlargement on the board, which we are going to use in evidence and copies of which have been furnished to you,—

Mr. Fulwider: Yes.

Mr. Jamieson: —illustrate valve operating devices and safety apparatus that were made and sold by the defendant corporation herein within the Southern District of California, Central Division, and elsewhere, before the complaint herein was filed, subject to the correction of any inaccuracies that may be later shown to exist. Is it so stipulated?

Mr. Fulwider: So stipulated.

Mr. Jamieson: Third, it is stipulated that plain, uncertified Patent Office copies of the patents in suit and [12] prior art patents may be introduced in evidence with the same force and effect as the originals or certified copies thereof, subject to the correction of any inaccuracies that may be shown to exist at any time.

Mr. Fulwider: So stipulated.

Mr. Jamieson: Fourth, it is stipulated that claims 1, 2 and 5 of patent No. 2,199,611 are in issue, and we have withdrawn claims 3 and 4, in accordance with the letter I sent to you, to the attorney for the defendants, in order to simplify and narrow the issues in the case, and I am just making that statement for the record. I don't believe any formal paper was filed, but simply a letter to you. [13]

ALVA G. BLANCHARD,

the plaintiff herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: What is your name, please?

The Witness: Alva G. Blanchard.

The Clerk: That is A-l-v-a, is it not?

The Witness: Yes. [14]

Mr. Jamieson: Has your Honor any preference as to where I stand?

The Court: No, except that I don't want you to stand too close to him.

Mr. Jamieson: We are going to use these charts here.

The Court: Yes. It is much better to stand away from the witness unless you are showing him documents.

By Mr. Jamieson:

Q. Will you please state your name?

A. Alva G. Blanchard.

Q. How old are you? A. Forty-nine.

Q. Where do you reside?

A. Shreveport, Louisiana.

Mr. Fulwider: Could I ask you to speak up just a little bit, Mr. Blanchard? I can't hear you.

The Witness: Yes.

Q. By Mr. Jamieson: Are you the plaintiff in this case, Blanchard v. Pinkerton, No. 7734-Y, Civil?

A. I am.

Q. Are you the inventor of the patents in suit, Nos. 2,233,395 and 2,199,611? A. Yes.

Mr. Jamieson: I will offer in evidence as Plaintiff's Exhibit 1 a copy of the first patent, No. 2,233,395,

(Testimony of Alva G. Blanchard)

and for [15] the court's convenience, I have a copy for the court.

The Clerk: So admitted, your Honor?

The Court: Yes. It may be received and a paper copy may be used instead of the official copy.

The Clerk: Plaintiff's Exhibit 1. No. 2,233,395 is Plaintiff's Exhibit 1 in evidence.

(The document referred to was marked Plaintiff's Exhibit 1, and was received in evidence.)

Mr. Jamieson: I offer in evidence as Plaintiff's Exhibit No. 2 the second patent in suit, No. 2,199,611, and I offer a plain uncertified copy in evidence, and a copy for the court's convenience.

The Clerk: Admitted, your Honor?

The Court: So admitted, yes.

Th Clerk: Plaintiff's Exhibit 2 in evidence.

(The document referred to was marked Plaintiff's Exhibit 2, and was received in evidence.)

Q. By Mr. Jamieson: You are the owner of these patents and all rights under them? A. Yes.

Q. Have you ever manufactured any device embodying the inventions as shown and claimed in these patents?

A. Yes, sir.

Q. Under what name did you manufacture these devices?

A. In the name of the Inferno Company. [16]

Q. Have you any partners in that company?

A. I do not.

(Testimony of Alva G. Blanchard)

Q. Is that just a fictitious name for your operations?

A. Yes, it is.

Q. Have you a catalogue showing the devices manufactured by you under the patents in suit?

A. Yes, I do.

Q. Will you identify that catalogue and the parts that show the patents in suit?

A. Yes. This is our catalogue and Bulletin No. 15, which shows a copy—or, shows articles that are covered by the patents.

Q. Is that the one that has the green binding?

A. Yes, it is.

Mr. Jamieson: I offer that in evidence as Plaintiff's Exhibit No. 3.

The Clerk: So admitted, your Honor?

The Court: Yes.

The Clerk: No. 3 in evidence.

(The catalogue referred to was marked Plaintiff's Exhibit 3, and was received in evidence.)

Q. By Mr. Jamieson: Have you one of the valves manufactured by you under the patent in suit?

A. Yes. This is a triple valve that is covered in our patent. [17]

Mr. Jamieson: I offer that in evidence as Plaintiff's Exhibit No. 4.

The Clerk: Is this admitted, too, your Honor?

The Court: Yes.

The Clerk: Plaintiff's Exhibit 4, in evidence.

(The valve referred to was marked Plaintiff's Exhibit 4, and was received in evidence.)

(Testimony of Alva G. Blanchard)

Q. By Mr. Jamieson: Have you a double valve?

A. Yes, we make them in a double valve, and this is a sample of it.

Mr. Jamieson: I offer this in evidence as Plaintiff's Exhibit 5.

The Court: Admitted.

The Clerk: Plaintiff's Exhibit 5 in evidence.

(The double valve referred to was marked Plaintiff's Exhibit 5, and was received in evidence.)

Q. By Mr. Jamieson: How did you come to invent the patents in suit? Will you tell us the story?

A. I manufactured alarms for a number of years and the alarms were pretty good, but I noticed a few customers began to take the alarms off because they said the firemen wouldn't pay attention to the whistle and would continue whatever they were doing, and the water in the boiler would get low anyway, even with the whistle blowing. So I contacted all the manufacturers of alarms other than myself at that [18] time, and tried to find some concern that would make an automatic fuel shutoff valve that would operate in connection with the alarms. Well, there was none on the market at that time, and—

Q. Did you make any other investigation?

A. Well, in the fields, of course. There was nothing of that kind in use and nothing on the market, so I began experimenting for a means to accomplish this, and I finally accomplished it in '33. Then I think I sold my first complete unit in 1934, and during the next year I applied for a patent on the entire device.

(Testimony of Alva G. Blanchard)

Q. What were some of the troubles that you encountered that caused you to make the invention of the patents in suit?

A. Well, a great many customers were even taking the alarms off alone.

Q. Why?

A. Because the firemen would hear the whistle blow and they would think they had so much time before they would actually have a dangerous condition, and they would continue doing whatever they were doing, and oftentimes they were busy longer than they thought they would be, and the water would continue falling until it got to the dangerous point.

Q. What happened when it got to the dangerous point?

A. Well, when it got to the dangerous point they either had to shut the boiler down completely, or the fireman [19] would take a chance on putting the water in the boiler, and I know in at least one instance the fireman took that chance of putting the water in the boiler and blew it up.

Q. When these boilers blew up, were there different types of explosions? A. Yes, there were.

Q. Have you any pictures that illustrate these different types?

A. Yes, I have. I have here a picture of a boiler explosion at Talco, which was caused by the water getting too low in the boiler and staying that way for some time. When this condition exists the crown sheet gets so hot that the stay bolts push through it and it causes an explosion in which the boiler goes straight up.

(Testimony of Alva G. Blanchard)

Q. Do these two pictures illustrate that type of explosion? A. Yes.

Mr. Jamieson: I would like to offer these illustrations in evidence as Plaintiff's Exhibit 6 and 6-A.

The Clerk: Which is 6?

Mr. Jamieson: This is 6.

The Clerk: Plaintiff's Exhibits 6 and 6A.

(The photographs referred to were marked Plaintiff's Exhibits 6 and 6-A, and received in evidence.) [20]

Q. By Mr. Jamieson: Have you any pictures that illustrate the other type of explosion?

A. The other type of explosion is caused by the water getting low and exposing the crown sheet, but not long enough to reduce it to a soft condition, so that the stay bolts will stay there while it reaches this condition, and the fireman will start the water and boiler and flood the crown sheet. When this occurs steam is generated so fast that the safety valves can't take care of it, and a tremendous pressure is put on the boiler inside and blows it all to pieces.

Q. Do these photographs illustrate that type of explosion? A. Yes, they do.

Mr. Jamieson: I would like to ask they be received in evidence as Plaintiff's Exhibits 7, 7-A and 7-B.

The Court: All right.

The Clerk: Plaintiff's Exhibits 7, 7-A and 7-B in evidence.

(The photographs referred to were marked Plaintiff's Exhibits 7, 7-A and 7-B, and were received in evidence.)

(Testimony of Alva G. Blanchard)

Q. By Mr. Jamieson: Are these explosions very severe?

A. Yes, they are very serious, and I would estimate in 50 per cent of the explosions life is lost or serious injury results. [21]

Q. Were there very many of these explosions occurring before you made your inventions of the patents in suit?

A. Well, I haven't seen any notices of explosions in some time, but, as well as I remember, when we first began experimenting on this device we read of an explosion in the oil fields at least every two or three weeks; oftentimes every week.

Q. After you introduced your device, were there any explosions of any of the boilers on which your device, covered by the patents in suit, were installed?

A. Not on our—not in the boilers on which we installed our equipment. But, of course, there were still many explosions, but we noticed though that the rate of explosions was decreasing as our sales of this equipment increased.

Q. Did any of the boilers on which your device was installed explode?

A. I had one report of a boiler explosion where the customer owned our equipment, and we immediately investigated it, and the customer advised me that his mud pit had broken into the feed water pit, and he had his boiler half full of mud. He continued using our equipment after he cleaned it out. No life was lost in that instance.

Q. Did he use your equipment after that?

A. Yes.

(Testimony of Alva G. Blanchard)

Q. Do you know of any other instance [22]

A. I know of no other instances.

Q. Where boilers have blown up with your equipment on them? A. That's right.

Mr. Jamieson: Now, we have prepared enlargements of the patents in suit and drawings of the defendants' apparatus, and I would like to have you come down and take a pointer and refer to these enlargements and explain to the court your invention.

Before you do so, however, I would like to ask that this first enlargement be marked Plaintiff's Exhibit 8 and the second one Plaintiff's Exhibit 9.

The Clerk: These will be marked for identification?

Mr. Jamieson: Yes. Unless you want to stipulate that they go in?

Mr. Fulwider: Let's mark them for identification.

Mr. Jamieson: They will be marked for identification.

The Clerk: This will be Plaintiff's Exhibit 8, for identification.

(The enlarged chart referred to was marked Plaintiff's Exhibit 8, for identification.)

Mr. Jamieson: The second one will be Plaintiff's Exhibit 9 for identification.

The Clerk: Plaintiff's Exhibit 8 for identification. [23]

(The enlarged chart referred to was marked Plaintiff's Exhibit 9, for identification.)

Mr. Jamieson: And this one Plaintiff's Exhibit 10, for identification.

The Clerk: Plaintiff's Exhibit 10, for identification.

(The enlarged chart referred to was marked Plaintiff's Exhibit 10, for identification.)

(Testimony of Alva G. Blanchard)

Mr. Jamieson: Would your Honor like to come down near here? Or I have some extra copies.

The Court: No, that is all right. That will be fine.

Mr. Jamieson: For your convenience, I have prints of that if you would like them.

The Court: All right.

Mr. Fulwider: Will you put the numbers on them?

Mr. Jamieson: All right.

Mr. Fulwider: Which is which?

Mr. Jamieson: Do you have copies?

Mr. Fulwider: Yes, I have copies of 8, 9 and 10.

Q. By Mr. Jamieson: Now, I will ask you to refer to these exhibits, Nos. 8, 9 and 10 and explain to the court the construction and mode of operation of your invention shown on the left side of Exhibit 8.

A. The drawing on the left side of Exhibit 8 is a general view of the complete apparatus in my patent 2,233,395. At 70 there is a boiler. 100 shows an alarm body, the [24] mechanism of which is shown in another figure. The alarm body is connected by pipes 101 and 102 to the top of the boiler and side of the boiler, respectively. The alarm is set at a height that will reflect the condition, the level of the water within the boiler. Figure 40 or numeral 40 shows a feed water valve that is connected to the feed water valve 40a leading to the boiler, and the top of feed water valve 40 is connected to the alarm body by a pipe 15a. The feed water valve 20 is mounted in a feed water line 20a, leading beneath the boiler to the burners. The top of the feed water valve 20 is connected by line 25a to

(Testimony of Alva G. Blanchard)

the valve assembly. Within the alarm 26 is a whistle which sounds an alarm when the water within the float is at a certain level.

On turning to Exhibit 9 I show in the lower left-hand corner a cross-sectional view of my fuel shutoff valve, as illustrated by the numeral 20 of Figure 1 of the preceding exhibit. This cross-sectional view is taken across the fuel line leading to the boiler.

Figure 1 of 2,199,611 shows the control mechanism for operating the fuel cutoff valve, as it was originally designed. In the operation the power to operate this device came from the pipe 11 down through this opening 25 into the upper part of the fuel cutoff valve. In operation in Figure 1 of 2,199,611 the water level is shown by this dotted line, and the float 33 is suspended in this water, and the water level [25] rising and falling raises and lowers the float 22 and, in turn, the arm 20 is raised and lowered as it is connected by the beam 34 to the float. When the water level drops in the boiler to a certain point, the arm 20 moves on the pin 24 as a fulcrum point and pulls the valve by moving the pin 25 against the back of the valve until it is in an open position. Then the steam above the water level and the alarm passes through this valve which comes down through this pipe and exerts a pressure on the float, the chamber 71. That pressure on the float forces the float through the valve 80 and 79 into the chamber 72. Here that pressure is exerted on a diaphragm 75—or, correction, 73. This pressure on the diaphragm forces the piston down against the spring 77, and through the stem 74 to the valve 75, until the valve 75 comes in contact with the seat 76, at which time the fuel supply to the boiler is cut off. When

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the fire is cut off then the operator, of course, ascertains what his trouble was, and when he has fixed it and is ready for his fire to come on again, he comes to this point here and opens—

Q. This “point here” does not show in the record.

A. He comes to the manual release 78 on the fuel cut-off valve and opens it, and allows this pressure to exhaust out of that opening, at which time—

Q. At what opening?[26]

A. Out of the opening 78a, at which time the valve is opened up.

Now, originally my non-return means was in this valve, because when the fire was cut off the fireman would immediately bring his water back up to the right level.

Q. When you say “this valve,” the record does not show which one you are referring to.

A. In Figure 1 of patent 2,199,611. As the float was raised, float 33 was raised, the arm 20 was moved in an upward position until the pin 25 forced the valve back against its seat, at which time the water that had condensed in this line was retained in the fuel cutoff valve to hold it in a closed position. In experimenting with the device I found that oftentimes the valve held by pin 25 against its seat would leak before there was any low water. This condition caused the pressure to build up in this line and on the fuel cutoff valve and cut the fire off prematurely, that is, when it wasn't necessary and there was plenty of water in the boiler. To overcome this defect which existed perhaps in 10 or 15 per cent of the cases we put a bleed opening in our line, which is indicated in patent 2,233,395 at 48a. This would permit any small amount of steam to escape that was just leaking by the

(Testimony of Alva G. Blanchard)

valve, but when the valve was pulled from its seat by low water, the greater volume of steam passing through this opening would not [27] exist through 48a, and the pressure then would build up on the fuel cutoff valve and operate it. At that time we introduced a second non-return means in our fuel cutoff valve to retain this fluid below, so that the bleed opening 48a could be opened at all times.

Q. What is the number of this second non-return means?

A. The second non-return means and preferred non-return means that we use is valve 79 seated against seat 80 of patent 2,233,395.

Q. Now, will you explain the way that your valve operated, and I will put Exhibit 10 on the board to assist you.

A. In my patent 2,199,611 Figure 1 shows a partial cross-section of the housing which is indicated in my previous Figure 1 of this patent 2,233,395. 1 indicates a housing, and the dotted line to the right indicates the water level within the housing. At 2 I have an opening, which is made in the form of a sleeve 3, and this sleeve is welded into the housing at 4. At 6 I have a plug which is retained in this opening in the sleeve by threads at 5. Through this opening I have a plurality of passages, one of which is indicated by the pipe 11. In these passages I have valve seats and valves with various length slots in their stems. These valves are held onto their seats by pin 25, and this pin 25 is carried by float arm 20, which is [28] fulcrumed on a lug extending from the plug by pin 24.

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On the right the float arm is raised and lowered by float 33, which is attached to a float arm 20 by a suitable pin 34.

This Figure 1 is a vertical cross-section through the center valve of the device. Now, Figure 2 represents a horizontal view through all of the valves and with just part of the float rod showing. Figure 6 shows the plug, and 3 is a sleeve in the housing 1. 7, 8 and 9 are passages through the plug 6. Into each one of these openings there is a seat 13, which are all alike. Against these seats I have valves 14, 15 and 16. They have stems on them and through these stems there are openings to receive a pin 18. The first valve loosely fits this pin 18, so that when the float arm 20 falls with the lowering of the float, the first valve is pulled from its seat.

Q. What is the number of the first valve?

A. The first valve 16 is pulled from its seat. When this first valve is pulled from its seat the steam which is on the inside of the housing passes through the valve 16 and seat 13 through the opening 9 and pipe 12 to a suitable feed water valve, as shown in Figure 1 of my drawing in 2,233,395.

Q. At what number?

A. At 40. When this valve opens, that is, the feed [29] water valve 40 opens, it is normally closed, this pressure then opens this feed water valve, which allows water to go into the boiler, and when the water level in the boiler is raised again, it also is raised in this housing, and the float 33 is raised and the arm 20 and the valve 16 is again seated on its seat 13. At this time the feed water valve 40 is closed, and no further water will go into the boiler. But if the water level

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continues to fall in the boiler instead of passing through the feed water valve to the boiler by a failure of the water supply, the float will drop another predetermined amount until the back end of the valve 15 comes in contact with the back end of the slot in valve 15. This clearance is indicated by the numeral 21, pointing to the back end of this valve. When this valve is opened then by the pin 18 coming in contact with the back end of valve 15, the second valve is pulled off from its seat and the steam passing between valve 15 and seat 13 passes through the opening gate and through the pipe 11 to a suitable alarm whistle. When the alarm—

Q. What is the number of that alarm whistle?

A. The alarm whistle is indicated by the numeral 26 in my Figure 1 drawing of patent 2,233,295.

If the engineer or fireman or attendant is not present to hear the whistle and allows the water level to continue to drop, it will fall another predetermined distance, [30] depending on the length of the slot in the valve stem, until the back end of the slot in valve 14 comes in contact with the pin 18, at which time that valve is pulled from its seat.

Q. What is the number of that slot?

A. The clearance between the stem and the pin 18 is indicated by the numeral 22 in this figure. When this condition arises the steam will then pass between the valve 14 and the seat 13 and come through the opening 7 and the pipe 10 to the fuel cutoff valve, and it is connected into the pipe 25a on Figure 6 of 2,233,395. And then, of course, the fuel control or fuel cutoff valve operates as I have previously explained.

(Testimony of Alva G. Blanchard)

Q. Now, are you familiar with the construction and the mode of operation of the defendants' valve device that is the subject of this suit? A. I am.

Q. Is that shown in the right-hand side of these drawings, Exhibits 8, 9 and 10?

A. It is.

Q. Using these exhibits 8, 9 and 10, will you explain the construction and mode of operation of the defendant Pinkerton's device that is charged to infringe the patents in suit herein?

A. Well, the Pinkerton device does not utilize my [31] feed water control device, and his boiler is indicated at 70. His alarm is indicated at 100.

Q. Which exhibit are you talking about now?

A. Figure 1 of the Pinkerton apparatus or boiler.

Q. Is that Exhibit 8?

A. Which is Exhibit 8. As I said, the alarm of Pinkerton 100 is connected to the boiler 70 by the upper pipe 101 and the lower pipe at 102. He employs a whistle 26, and his fuel cutoff valve 20, which is connected to the alarm valve assembly by a pipe 25a. Through the fuel cutoff valve 20a the fuel passes through the fuel cutoff valve and thence on to the center of the boiler and up to the burners.

In operation the Pinkerton device illustrated in Figure 3 of Exhibit 9 is shown by a float 100 and a sleeve welded into this float, and there are no numbers shown at this point.

Q. Is 100 the float?

A. 100 is a housing around the water within the alarm body.

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Q. What is the number of the float?

A. The float is indicated at 3, which is attached to an arm by a suitable means, and the arm is No. 4. The arm 4 is fulcrumed about a pin 4a, and raises and lowers according to the level of the water and seats and unseats the valve shown in the seat 15 by the pin or pins 9. As the [32] float lowers the steam passes through the opening between the seat and the valve, and this illustration shows the valve cut through the near side, whereas in operation the steam comes through the valve immediately behind this, through the opening 25a and thence on down to the fuel cutoff valve, and into the fuel cutoff valve at 25a.

Q. Have you indicated those connections by pencil marks on this Exhibit 9?

A. I have. I have just drawn a line from the connection 25a to the point it goes into in the Pinkerton fuel cutoff valve.

Q. And the same on yours on the other side?

A. And I have indicated it the same on my structure. As this pressure comes down this line it builds up a pressure in the chamber 72 of the Pinkerton device and exerts this pressure on a leather cup, which I consider the equivalent of my diaphragm structure, as it is leak-proof, the same as my diaphragm structure. This pressure exerted on the leather cup 73 is transmitted to the valve stem 74, and the pressure overcomes the spring 77 and eventually presses the valve 75 down against its seat 76, at which time the flow of the fuel through the valve is cut off.

Now, when the water level rises in Pinkerton's device his valve is seated again, and all of the fluid that is in

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this line is entrapped at the head of the Pinkerton device [33] and holds the cutoff. Then when the fireman in the Pinkerton device has his water trouble corrected, he opens the valve 78 by pressing it and the fluid pressure escapes through the opening 78a and the spring 77 raises the valve and piston and stem up and opens the fuel passage through the valve.

Now, Pinkerton's device operates satisfactorily for about 75 per cent of the time, the same as my original structure did, as he has only my original non-return means, as shown in the valve assembly in the alarm body, and he doesn't have the other part of it and the result is that oftentimes the leakage of this valve will—

Q. "This valve" doesn't show in the record.

A. The leakage of the valve in seat 15 will cause the pressure to build up on his cylinder head and the fire will be cut off. I have personally seen in a number of cases where the fireman had locked this valve open so that the pressure could not possibly cut the fuel off, because it built up accidentally on account of this leakage which hasn't yet been provided for.

Q. Now, will you refer to the valve mechanism shown in the figure on the right of Exhibit 10 and explain the construction of the Pinkerton valve in that connection?

A. In Figure 1 on the right of Exhibit 10, showing the Pinkerton valve operating structure, a float housing is indicated at 1. There is an opening 2, into which there is a [34] sleeve 3 welded. There is a plug 6, which is fastened into the sleeve by the threads 5.

Figure 1 is a vertical cross-section through the center of the opening 8 illustrated in Figure 2 below. The float 33 of Pinkerton's device floats in the water within the

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alarm housing, and is connected by a pin 34 to the float arm 20. The float arm 20 is fulcrumed by a lug on the plug within the housing at a point indicated at 24. The upper part of the drawing shows a pin 25 through the stem of the valve. This valve is seated in a seat, the number of which is not shown, but the seat is within the opening 8, and the opening 8 leads to a pipe 11, to which a whistle 17 is attached.

The lower illustration, Figure 2, shows a horizontal cross-section through both valves. The housing is indicated by the numeral 1 and there is a sleeve 3 welded into the housing. There is a plug with openings 8 and 9 screwed into this sleeve. Into these openings 8 and 9 there are two seats 13. In these two seats 13 there are valves 15 and 16. Attached to the end of valve 15 is a lever 20. In this lever 20 there is a pin 25, and a pin 25 above, in two pieces. This pin in the first valve seats the first valve first. In the second valve, on an elevation of the water level, the pin 25 comes in contact with the end of the slot in valve No. 16. [35]

Q. What is the number of that slot?

A. The number of the slot is 21, and this valve 16 is made in two pieces, and the pin 25 is made in two pieces.

Q. Do his pin and slot perform the same purpose as you have made in one process?

A. Yes. This pin and slot in two pieces perform the same function and work exactly like a 1-piece structure of pin and valve.

Q. Now, I will ask you to compare the structure shown and described and claimed in your patents with

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the Pinkerton structure, using these same exhibits, Nos. 8, 9 and 10.

A. On Exhibit 8 on the left-hand side I show one of the drawings of Figure 1 of my patent, and on the right I show Pinkerton's hooked up in the same way. Pinkerton has a boiler 70, the same as the boiler 70 in my structure. His alarm 100 is the same as the alarm 100 in my structure. It is attached to the boiler in the same way by pipes 101 above and 102 below. In Pinkerton's structure he does not use my feed water valve, but he does use—

Q. What is the number of that?

A. That is 40 in my drawing but he uses my fuel cutoff valve 20 in his structure and 20 in my structure. The fuel passes through my feed water valve 20 through the line 20a, thence to the boiler.

Q. Is that feed water valve 20? [36]

A. My fuel cutoff valve 20.

Q. And the fuel line?

A. And the fuel line 20a, thence to the boiler.

In Pinkerton's device I have indicated 20a for the fuel line through the fuel cutoff valve, thence to the boiler.

The fuel cutoff valve in my structure is indicated by the numeral 25a, and in Pinkerton's structure it is the same.

Q. Continue with this exhibit.

A. Now, in Exhibit 9, Figure 3 of the Pinkerton apparatus 100 indicates the housing surrounding the water within the alarm body. It is the same in Pinkerton's structure as it is in my structure. The opening within the housing—

(Testimony of Alva G. Blanchard)

Q. Will you compare Figure 3 of Pinkerton with Figure 1 of your patent 2,199,611 first, and then with the other?

A. In Figure 3 of the Pinkerton structure the housing is indicated by 100, and in Figure 1 of my patent 2,199,611 the housing is 1. There is an opening within this housing 2 in my structure which is not numbered in Pinkerton's structure.

Q. Is it present there?

A. It is present at the same time and can be easily distinguished.

I have a sleeve 3, which is welded into the housing, and [37] it is also the same in Pinkerton's structure, although it is not numbered. I have a plug 6 in my housing closing this opening which is indicated by the numeral 8, which is Pinkerton's plug closing his opening within the housing.

Then Figure 1 is best compared with Figure 3 of patent 2,233,395 for a vertical cross-section. The float of Pinkerton's 3 is the same as my float 3 in Figure 3. The arm 4 in Pinkerton's is the same as the arm 4 in my structure. The valve stems 9 in Pinkerton's structure are the same as my single valve stem 9. The fulcrum point 4a in Pinkerton's structure is the same as the fulcrum point 4a in my structure. In Pinkerton's structure he cuts the pin in two, or uses a pin of two pieces and a valve stem of two pieces to accomplish the same result that I do with one pin through the shaft of all the valves.

Q. Now, will you compare your fuel cutoff valve with his?

A. Now, in Figure 2 which shows Pinkerton's safety fuel cutoff valve the opening which furnishes the pressure

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to operate the valve leading into it 25a is the same as in my structure. The chamber 72 of Pinkerton is the same as the chamber 71 in my structure, and 72 below. The leather cup 73 of Pinkerton's is the same or an equivalent structure to my diaphragm 73; that is to say, it is leak-proof and accomplishes the same result. The spring that normally [38] holds the valve open in Pinkerton's structure 77 is the same as the springs that I use in my structure 77. The valve stem in Pinkerton's structure indicated by the numeral 74 is the same as 74 in my structure. The valve 75 attached to the valve stem of Pinkerton's is the same as my valve 75 attached to the stem of my valve. The seat 76 of Pinkerton is the same as the seat 76 in my structure.

Q. Are these the same views of yours and his, or are they at different cross-sections?

A. No, Pinkerton's view is taken lengthwise, with the valve that is running, and the cross-section of my valve is taken across the pipe.

Q. Would you say that his is at right angles to yours, and vice versa?

A. Yes, his valve is at right angles to the cross-section I show. Pinkerton uses a manual release 78, which opens an opening 78a, the same as my manual release 78, which opens an opening 78a.

Now, I have a non-return means 80 and 79, which is a valve and seat, which is my preferred non-return means for retaining my fuel valve in a closed position, but I have a primary non-return means, which is in my valve assembly as shown in Figure 1 of 2,199,611, which is the action of the float in holding the valve seat on its seat, which is the same structure that Pinkerton uses in Fig-

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ure 3, to hold the [39] pressure within his fuel cutoff valve.

Q. Now, will you conclude your answer to this question by describing the structures shown in Plaintiff's Exhibit 10?

A. In this exhibit Figure 1 on the right represents a vertical cross-section of Pinkerton's structure, and Figure 2 represents a horizontal view of Pinkerton's structure through these valves. In Figure 1 on the left-hand side is a vertical cross-section of the valve structure in patent 2,199,611, and Figure 2 is a horizontal view for comparison. In Figure 1 of Pinkerton's his housing 1 is the same as my housing 1. His opening within the housing 2 is the same as the opening I give my housing 2. He has a sleeve 3 in his housing, the same as I have a sleeve. To close the sleeve he has a plug 6, which is the same as my plug 6. Through his plug he has multiple openings indicated in Figure 2 by 8 and 9, the same as I have, 7, 8 and 9 in Figure 2.

Looking at the lower Figure 2 of Pinkerton's structure, his float arm 20 is the same as the float arm 20 of my structure. On a raising and falling of the float 33 in Figure 1 of Pinkerton's, which is the same as in Figure 1 of my structure, the float arm is raised and lowered to seat the valves 15 and 16 of his structure, the same as valves 14, 15 and 16 are seated and withdrawn from their seat in Figure 2 of my structure. [40]

Valve openings 8 and 9 of Pinkerton's Figure 2 structure are the same as openings 7, 8 and 9 in my structure. And the pipes 11 and 12 leading into these openings are the same as the pipes 11 and 12 in my structure. Into the opening of Pinkerton's structure he has valve seats

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13, which are the same as valve seats 13 in my structure. He has valves 15 and 16 in his structure, which are the same as valves 15 and 16 in my structure. In valve 15 of his structure the pin 25 fits closely so that on a lowering of the arm 20 the valve 15 is pulled off from its seat immediately. Ordinarily steam would pass through this opening, through the opening 8 and pipe 11 to a whistle. On a continued lowering of the float arm 20, there is a pin 25 through an extension on his valve 16, and this pin 25 on striking the lower part of the opening 21 in the extension to his valve 16, the second valve is pulled from its seat, the same as I accomplish with one pin and one-part valve in 15. The opening in the valve stem of my valve 21 does exactly the same thing that Pinkerton's does.

Now, I believe that concludes the comparison.

Q. Now, I hand you the memorandum filed by me in this case and ask you to point out the elements shown on page 3 thereof in your structure and in the Pinkerton structure.

A. Well, in Pinkerton's structure the housing is indicated at 1. In my structure it is indicated at 1. [41]

Q. Which Exhibit number are you talking about now?

A. Exhibit No. 10, Figure 1. A housing having an opening is indicated by the housing 1 and the opening into which this plug screws in Pinkerton 6, and retained in the opening by the threads 5. In my structure I use the plug 6 screwed into the opening which is threaded and is indicated by the numeral 5.

(Testimony of Alva G. Blanchard)

Q. Please refer to your structure first and then to his in the next comparison.

A. Yes. A plurality of outlet passages through said housing is indicated in Figure 2 of my drawing in 2,199,611 by the openings 7, 8 and 9. A plurality of outlet passages through said housing in the Pinkerton structure is indicated by the openings 8 and 9 of Figure 2 of the Pinkerton structure.

A plurality of outlet passages through said plug are indicated by the openings or the pipes 10, 11 and 12 in Figure 2 of my structure and by the pipes 11 and 12 of Pinkerton's Figure 2 structure.

A plug in said opening is indicated in my structure by the plug 6, and in Pinkerton's structure by the plug 6 of Figure 1.

A plug adapted to close a fluid outlet; a valve in each of said passages; said valves having slots—

Q. Let's take those one at a time, please. [42]

A. Oh, yes. I am rushing here. A plug adapted to close a fluid outlet, in my structure that is the plug 6, adapted to close the opening in the sleeve, which is done by the means of threads 5, in Figure 1 of patent 2,199,611. In Pinkerton's structure the plug is retained in the opening by the threads 5 in exactly the same way.

A valve in each of said passages is indicated by the valves 14, 15 and 16 of Figure 2 of my patent 2,199,611. In Pinkerton's structure the valves are indicated at 15 and 16 in Figure 2.

The next element is said valves having slots of varying lengths in one end to determine the order in which they are opened.

(Testimony of Alva G. Blanchard)

The Court: Which claim are you reading from? I lost track there. They are all alike.

The Witness: Well, I was reading all of the elements separately. Now, for instance, the claim 1 reads: A housing, a plurality of outlet passages through said housing,—

The Court: I think that is confusing because the infringement alleged is of specific claims,—

The Witness: In one claim.

The Court: —so you ought to tell me when it reads on one, and not bunch them all together. You didn't get a homogeneous claim of that kind. Does this infringe 3?

The Witness: Yes. [43]

The Court: Then take the one that is most comprehensive and then compare it. You can't read everything you have in the specifications and show a comparison because you didn't claim everything in the specifications.

The Witness: Suppose I just take claim 1.

The Court: You don't know, but Mr. Jamieson knows that the only thing infringed in patents is the claim, and not the descriptive materials. They cannot be infringed.

Mr. Jamieson: Yes, your Honor. May I explain?

The Court: That is the trouble with having the inventor do it. As I have always said, he is sold on his art, and he bunches them all together. He is a partisan. The thing needs explanation, I know. You ought to have a scientist here to examine that and to do that. The plaintiff himself is a partisan. I wanted to check them here and couldn't find anything he was reading.

Mr. Jamieson: If your Honor please, I filed a memorandum which has a chart of the claims.

(Testimony of Alva G. Blanchard)

The Court: That doesn't mean anything. What I want and all I want is somebody to compare the structures upon the claims and show me each of the elements of the claims. Otherwise, to bunch them together doesn't mean anything. Incidentally, your claims are just three small claims, but you have descriptive material here that covers three pages.

Mr. Jamieson: All right. I was trying to save time. [44] your Honor.

The Court: That is not saving time. Bunching them together is confusing things.

Mr. Jamieson: We thought what we were doing was saving time, taking each separate element, and we thought if you had a record and a transcript it would show. But we will do it the other way, your Honor.

Q. By Mr. Jamieson: Will you take claim 1 of the patent in suit 2,199,611 and state each element of the claim that is in issue.

The Court: At this time we will give the reporter a break and take a short recess.

(A short recess was taken.)

Mr. Jamieson: I will offer in evidence as Plaintiff's Exhibit No. 11 a catalogue of the defendants' structure, and as Plaintiff's Exhibit 12—

The Clerk: Just a minute. Is this exhibit admitted, your Honor?

The Court: Yes.

The Clerk: That is Plaintiff's Exhibit 11 in evidence.

(The catalogue referred to was marked Plaintiff's Exhibit 11, and was received in evidence.)

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Mr. Fulwider: Your Honor, I have worked out an outline which I was going to use later. I would be glad to submit this, to follow the claims there. [45]

Mr. Jamieson: And I would like to offer as Plaintiff's Exhibit 12 one of the defendants' valves to be used by this witness in answering the last question.

The Clerk: That is Plaintiff's Exhibit 12 in evidence.

(The defendants' valve referred to was marked Plaintiff's Exhibit 12, and was received in evidence.)

The Court: You see, the difficulty in these things is this, and the reason why I like to confine testimony to the issues is because you have 50 or 60 elements, or, no, you have 100 of them, or 101, I think, and you start to bunch them up and describe them and we will lose track of the one thing we have to decide. That is, the infringement consists in the novelty which is claimed for this device and which is alleged to be infringed, and the novelty of it, what it added to the art is contained in the claims. And so if a person, whether he be the inventor or an engineer, can give the court a general idea of how the instrument works, then when it comes down to a comparison it should be limited only to the claims, because all others are eliminated for the reason that he isn't claiming everything in the field.

Mr. Jamieson: May I make an explanation, your Honor?

The Court: Yes.

Mr. Jamieson: I asked the question that precipitated this, and the reason I did is that I filed a memorandum [46] which contains a chart of the claims, and each of the claims has certain elements that are repeated,

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and those elements are set forth in the chart. They are boiled down into elements, and I was trying to save repetition, but I would just as leave go through the claims.

The Court: I will tell you why this isn't helpful. These claims are all fashioned in certain manners, and each successive claim, especially in a patent like this with only three claims, carries over the preceding claim, and I desire something more.

Mr. Jamieson: That isn't quite true, your Honor. That is why we made that chart. Some claims are prepared that way, but these are not. Each one is different.

The Court: No. At least, take a look at just one. Look at claim 2, or, let us take claim 1:

"In a safety apparatus for boilers, the combination of a fuel supply conduit, a valve in said conduit, means for yieldingly holding said valve open, a compartment, a diaphragm, a protective liquid . . ."

Now, let me see. We go down and the first four lines of claim 1 are repeated in claim 2. Then on claim 3—

Mr. Jamieson: Claim 3 isn't in issue, your Honor.

The Court: Oh, you are claiming only 1 and 2?

Mr. Jamieson: 1, 2 and 5. You are talking now from [47] the other patent than the one I am speaking of.

The Court: Oh, I beg your pardon.

Mr. Jamieson: The witness was talking about No. 2,199,611.

The Court: I am sorry.

(Testimony of Alva G. Blanchard)

Mr. Jamieson: That is the one we were on. Do you want that patent?

The Court: That is all right, gentlemen. We just got through a long case lasting five and a half days and my pattern changes so fast I think I was still thinking about the portal-to-portal case, and I didn't catch the number. I am sorry. We will start all over and I will have this one in mind.

Mr. Jamieson: I gave your Honor a copy.

The Court: This has 5, and you are claiming 3?

Mr. Jamieson: 1, 2 and 5.

The Court: 1, 2 and 5.

Mr. Jamieson: 3 and 4 we just left out.

The Court: Go ahead from where you were and I will try to follow you.

Q. By Mr. Jamieson: We will start over again and take claim 1, and show the structures of claim 1 in your drawings and then compare that structure with the structure you consider similar in the Pinkerton drawings.

A. In my patent No. 2,199,611, claim 1, the first [48] element is a housing, which I indicate by the numeral 1 in Figure 1. The second element is a plurality of outlet passages through said housing. I indicate this with the passages, or, with the openings 7, 8 and 9 in Figure 2 of this patent. The third element is a valve in each of said passages. I illustrate that as 14, 15 and 16.

Q. Well, rather than go through that way, I want you to take each element and show it first in yours and then in his; one at a time.

The Court: Then it is either there, or it is not, or if he has a substitute, why, indicate that.

(Testimony of Alva G. Blanchard)

The Witness: All right. In Figure 1 of my structure I show the first element, a housing, by the numeral 1. In Pinkerton's structure I also indicate it by the numeral 1 in his Figure 1.

Q. By Mr. Jamieson: Which exhibit are you speaking from?

A. From Exhibit No. 10.

Q. All right. Take the next element.

A. The next element of the claim is a plurality of outlet passages through said housing. This is illustrated in Figure 2 of my patent by the openings 7, 8 and 9. In Pinkerton's structure it is indicated by the openings 8 and 9, which are a plurality.

Q. In which figure? [49]

A. In Figure 2 of the Pinkerton Structure.

Q. Which exhibit?

A. Of Exhibit 10. The third element is a valve in each of said passages. In my structure I illustrate that by the valves 14, 15 and 16 of Figure 2, patent 2,199,611. In the Pinkerton structure these valves 15 and 16 are indicated in Figure 2.

Q. Of what exhibit?

A. Exhibit 10. The next element is: said valves having slots of varying lengths in one end to determine the order in which they are opened. I illustrate that in Figure 2 of my drawing. Valve No. 16 has an opening that loosely fits the pin 18. The second valve 15 has a longer slot in it and the additional length of this slot is indicated by the numeral 21. In the third valve 14 the additional length slot is indicated by the numeral 22, and it is slightly longer than the slot 21.

(Testimony of Alva G. Blanchard)

In Pinkerton's structure his valve No. 15 has an opening in it that the pin 25 fits loosely in. In the second valve 16, which he has made in two pieces and pinned together, the opening is indicated by the numeral 21 in both figures 1 and 2.

Q. Of what exhibit?

A. Of Exhibit 10. The next element is a pin through said slots operated by a lever fulcrumed within said housing. In my Figure 1 I illustrate a pin 25, and in Figure 2 the pin [50] is numbered 18. It passes through the slots in the ends of valves 14, 15 and 16.

Q. And is fulcrumed—

A. The lever 20 is fulcrumed within the housing on a lug, through which there is a pin 24 in Figure 1 of my structure.

In Pinkerton's structure, Figure 1, Exhibit 10, the lever is indicated by the numeral 20, which is fulcrumed on a lug within the housing and the pin is numbered 24. The pin that passes through the ends of the valves in Pinkerton's structure is made in two pieces. A part of the pin goes through the No. 1 valve, which is No. 15 in Figure 2 of Pinkerton's structure, and the other part of the pin is fastened integrally with the lever, and is indicated by the numeral 25, and it passes through the opening fitting in the extension of his valve 16.

The next element of that claim is a float on the end of said lever. In my structure, Figure 1, I indicate the float by the numeral 33 suspended in the water. In Pinkerton's structure he uses a float suspended from the lever 20 at the point 34, and it is the same as my structure.

Then it continues, the description of that element: whereby said valves are opened one at a time in se-

(Testimony of Alva G. Blanchard)

quence, responsive to the downward movement of said float. In my float when 33 falls in Figure 1, the first valve, No. 16, [51] is the first to be removed from its seat. As the float arm 20 continues to fall, the pin 18 comes in contact with the back of the slot 21 in valve 15. Thus the second valve is opened. A continued drop in the lever 20 in Figure 1 brings the pin 18 in contact with the back end of the slot of valve 14 and removes it from its seat. Thus each valve is removed in sequence one after the other until all are opened.

Q. Is that done by the downward movement of the float?

A. That is accomplished by the downward movement of the float, which is very important in this structure.

In Pinkerton's structure, Figure 2, the first valve is removed by the downward movement of the arm 20, by moving in an arc around the pin 24 illustrated at 21. Thus pin 25 in valve 15 is first removed from its seat. A continued downward movement of the float arm 20 results in the extension Pinkerton has fastened to his lever, contacting the lower side of the slot in the extension to valve 16, at which time the second valve is pulled from its seat, and they are thus opened in sequence according to the downward movement of the float.

Q. You use the word "extension." Is there any difference in mode of operation?

A. There is no difference in the mode of operation whatsoever or the results accomplished. [52]

Q. Now, will you take the next claims?

A. The next claim has the first element—

(Testimony of Alva G. Blanchard)

Q. Is that claim 2?

A. Which is claim 2, has the first element as follows: A housing having an opening. In my structure I show this housing 1, and the opening in this housing is the opening that the plug 6 screws into, as indicated by the threads 5.

In Pinkerton's structure the housing is 1, and the opening shown with threads 5 is the opening which the plug 6 closes, which is the same as my structure.

The next element is a plug in said opening. In my structure this opening is closed by the plug 6 by means of threads 5. In Pinkerton's structure this plug is 6 and is closed, the opening is closed by the threads 5, and it is exactly the same as mine.

The next element is: A plurality of outlet passages through said plug. In my structure I show this in Figure 2. The plurality of outlet passages are 7, 8 and 9, and the pipes leading to those outlet passages are 10, 11 and 12. In Pinkerton's structure these openings are 8 and 9 of Figure 2, and the pipes leading from these openings are 11 and 12, respectively.

The next element is: a valve in each of said passages. In my structure I illustrate in Figure 2 valves 14, 15 and 16. In Pinkerton's structure, Figure 2 of Exhibit 10, these [53] valves are indicated at 15 and 16 with an extension on his valve 16. It accomplishes the same results, and results in the same manner that my structure does.

The next element is: a valve operating lever fulcrumed on said plug and extending into said housing. In my structure I show this valve operating lever at 20 and 21 in Figure 2 of 2,199,611, and it is fulcrumed on the

(Testimony of Alva G. Blanchard)

plug by the pin 24, as indicated in Figure 1. In the Pinkerton structure, he has a lever 20, which is fulcrumed on a lug or a plug within the housing by a pin 24, as shown in his Figure 1. This is exactly the same as my structure.

The next element in this claim is: a float on the inner end of said lever. In my structure I show the float 33 attached to the inner end of the lever at the point 34 by a suitable means. In the Pinkerton structure, Figure 1, Exhibit 10, he has a float 33 attached to the inner end of lever 20 by a suitable means indicated at 34.

The next element in my claim is: a cross pin on said lever. I illustrate that in Figure 2 by the pin 18, which is a cross pin on this lever 20. In the Pinkerton structure—

Q. Is it also shown in Figure 1 of your patent?

A. It is also shown by the numeral 25 in Figure 1 of my patent. In the Pinkerton structure, Figure 1, the cross pin is indicated by the numeral 25 and shows one pin. [54]

In Figure 2 of the Pinkerton structure I have numbered both halves of his pin 25. His first half engages the opening at the first valve, and the other part of the pin which is attached to the lever is indicated by the same numeral 25, and extends through the extension to valve 16.

The next element is: stems on said valves having openings therein to receive said cross pin. I illustrate that in Figure 2 of my patent, which shows pin 18 extending through valve 16 loosely, through valve 15 which has a larger opening in the stem, and through valve 14 which has even a larger opening than valve 15 through its stem.

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Q. What is the number of that?

A. That opening is 22 in valve 14, and that opening in valve 15 is 21, and the opening fits loosely on the pin for valve 16. In the Pinkerton structure in Figure 2 this is illustrated by the valve stem 15, which has an opening that fits loosely the pin 25. The pin 25 is made in two pieces, and part of it is fastened to the lever and extends through the opening 21 in the extension to his valve No. 16. In the Figure 1 of Pinkerton's drawings the opening 21 is illustrated and the pin 25 extending through it. This pin works exactly the same way in Pinkerton's as it does in mine, and Pinkerton merely makes his pin in two pieces instead of one, as I do.

The next element is: said valve stem openings being [55] of varying lengths, whereby the downward movement of said lever will cause said pin to engage said valve stems to open said valves in sequence, one after the other. We illustrate that in Figure 2 of my drawing, which shows that the pin 18 fits the stem of valve 16, and it passes through the valve stem of 15, which has a slightly larger opening in its end.

Q. What is that number?

A. No. 21. And it must move a little further before the second valve is withdrawn from its seat. The third valve 14 has a slightly larger opening 22 in its stem, and the pin 18 must travel slightly further to reach the back of this slot and withdraw it from its seat.

In Pinkerton's the opening in the valve stem of 15 is approximately the size of the pin 25, so that on a downward movement of the lever 20, the valve 15 is immediately withdrawn from its seat. A continued downward movement of the lever will cause the other half of pin

(Testimony of Alva G. Blanchard)

25, which is fastened to the lever 20 of Pinkerton's, to continue until the pin strikes the back end of the opening 21, as illustrated in Figure 1 of Pinkerton's structure, at which time the second valve is withdrawn from its seat in sequence, the same as mine.

Q. Now, we will take claim 5, of that patent.

A. The next claim, claim 5, has the first element: [56] a plug adapted to close fluid outlet. In my structure I show the plug 6 adapted to close the outlet through the sleeve 3 by the threads 5. In Pinkerton's structure, Figure 1, Exhibit 10, it is shown by the plug 6 screwed into the opening through the sleeve 3 by the threads 5 indicated.

“and having a plurality of fluid passages there-through.”

This element is shown in Figure 2 of my structure by having the openings 7, 8 and 9 through the plug 6, in my structure.

In Pinkerton's structure it is shown by having the openings 8 and 9 in Figure 2 through the plug 6. That closes the opening, as shown in Figure 1 of Exhibit 10.

“a valve in each of said passages.”

In my structure they are illustrated by valves 14, 15 and 16 within the plug 6 of Figure 2 in my structure. In Pinkerton's the valves 15 and 16 close these openings through the plugs which are numbered 8 and 9.

The next element is: a float operated lever fulcrumed upon said plug. That element in my structure is illustrated in Figure 1 by the float arm 20, which is fulcrumed on the plug 6 by the pin 24, and revolves about this pin.

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Q. Is that operated by the float 33?

A. It is operated by the float 33 attached to the lever 20 by the pin 34. In Pinkerton's structure this float operated lever 20 operated by the float 33, connected [57] to the float arm by the pin 34, is fulcrumed on the plug and revolves about the pin 24. It is just the same as mine.

"a pin carried by said lever" is the next element. In my structure this pin is illustrated in Figure 1 at 25, and in Figure 2 by the numeral 18 which extends through all of the valve. In the Pinkerton structure this pin is broken in two pieces, and part of it goes through the No. 1 valve, the other part of the pin is fastened to the lever slightly back of this valve, and it engages the opening in the extension of valve 16, which is shown in Figure 2.

Q. Are both of those carried by the lever 20 in Pinkerton's?

A. The pin 25 in Pinkerton's, that is, both parts of it, are carried by the lever 20 to operate both valves. The next element is: stems on said valves having openings therein through which said pin extends. The openings in each stem being of different lengths than the others and the means to secure said pin in said lever, the stems on said valves having openings therein through which said pin extends are illustrated in Figure 2 of my drawing, in which the stems on the valves 14, 15 and 16 have openings through which the pin 18 extends, and the openings have different lengths, as indicated by the extra length slot in valve 15 by the numeral 21, and by the extra length in [58] the slot 22 in the valve 14. In the Pinkerton structure this is illustrated by the first

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valve loosely fitting the pin 25, and in the second valve 16 the extension to this valve loosely fits the second half of the pin, which is illustrated in Figure 1 by the opening 21. So that that illustrates that the openings in these valve stems are of different lengths to secure a movement of these valves at different times.

Q. How about the means to secure the pin in the lever?

A. The means to secure the pin in the lever are illustrated in my Figure 2 by an upset projection, which upsets part of the metal of the arm 20 over the pin nearest the numeral 19. The means Pinkerton uses to retain this pin is by means of wire, or another pin, as indicated at the ends of 25, and by screwing the second half of his pin in tapped openings in the arm 20 of Figure 2, Exhibit 10.

Q. All right. Now, will you similarly take the claims in issue of the second patent in suit and compare them with your structure and with Pinkerton's?

A. In my second patent, 2,233,395, the first element in claim 1 is: In a safety apparatus for boilers, the combination of a fuel supply conduit. That is best illustrated in Exhibit 8, Figure 1, at 20a in my structure, and in the Pinkerton structure on the right by a fuel line indicated by the numeral 20a, which is the same as mine. [59]

"a valve in said conduit," is the next element. This is illustrated by the valve 20 in Figure 1 of my patent 2,233,395, and by the valve 20 in Pinkerton's structure on Exhibit 8, which is the same as mine.

The next element is: means for yieldingly holding said valve open. This element is illustrated in Exhibit 9, Figure 6, by the spring 77, which yieldingly holds the

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valve 25 from its seat 26. In the Pinkerton structure this is illustrated by the spring 77, which is pressing upwardly against the valve No. 73, holding the valve 75 from its seat 76, which is the same as mine.

The next element in my claim is: a compartment. The compartment in my structure is illustrated by the numeral 72 in Figure 6. In the Pinkerton structure it is indicated by the numeral 72 of Figure 2.

The next element is: a diaphragm. In my structure I indicate this with a piece of rubber 73, extending over the top of the piston which is immediately under the diaphragm. In the Pinkerton structure this is illustrated by the numeral 73 in the form of a leather cup over the piston which is immediately under the leather cup. This leather cup gives the same effect as a diaphragm, in that it is leakproof, and is not subject to leaking, as would other types of piston construction.

Q. Is it an effective seal? [60]

A. It is an effective seal and operates the same as a diaphragm. The next element in my structure is: a protective liquid for said diaphragm in said compartment. The protective liquid is a condensed water in the chamber 72, which keeps the steam from coming in contact—from the means on the boiler that supplies that steam to operate the valve. In the Pinkerton structure the steam condenses in the same manner and forms a protective fluid over the leather valve cup 3, exactly as I do.

Q. Is that in the chamber 72 of Pinkerton's?

A. That is in the chamber 72 of Figure 2 of Pinkerton's structure.

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The next element of my claim is: connections between said diaphragm and valve. The connections between said diaphragm and valve are through the piston 74, which is attached to the piston immediately under the diaphragm 73 in my structure, shown in Figure 6, and the lower end has attached to it a valve 75. In the Pinkerton structure, indicated by the numeral 74, there is a valve stem which is attached to the piston immediately under the leather cup 73, and the lower end has attached to it a valve 75.

The next element is: means for supplying fluid under pressure to said compartment for flexing said diaphragm and moving said valve to closed position. The means for supplying the fluid to said pressure is shown— [61]

Q. You mean "such compartment"?

A. The means for supplying the fluid under pressure to said compartment for flexing said diaphragm and moving said valve to a closed position,—well, the means for supplying the fluid under pressure to said compartment come from the alarm body above, as indicated in Figure 1 of my drawing in 2,233,395 down through the passage 25a to the chamber 71 of my structure. In the Pinkerton structure the means for supplying fluid under pressure to said compartment for flexing said diaphragm and moving said valve to a closed position come from the valve opening through pipe 25a, down through the opening 25a and into the chamber 72, and this pressure moves the leather cup down against the spring 77, and seats it. The action is the same as mine.

The next element is: and manually operable means for relieving the fluid pressure on said diaphragm. I show

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a manual means for relieving the fluid pressure in chamber 72 by the valve 78. When this valve 78 is turned, the opening 78a is opened, permitting the pressure in chamber 72 to be exhausted to the atmosphere, and the spring 77 thereby raising the piston under the diaphragm 73 and at the same time raising the valve 75 from its seat. Pinkerton employs the same structure. The valve 78 is pressed and the valve seat is opened, opening an opening 78a through which the fluid is allowed to escape to the atmosphere, and the valve [62] spring 77 thereby raises the piston and the valve 75 from its seat 76.

The next claim is No. 2. The first element is: in a safety apparatus for boilers, the combination of a fuel supply conduit. The fuel supply conduit is shown by the numeral 20a in the lower part of my Figure 6 of 2,233,395, and is shown in the Pinkerton structure in Figure 2 by the same numeral 28a, as that is part of the —

Q. You mean 20a?

A. 20a—correction,—as that is part of the fuel supply conduit 1.

Q. Is that also shown in Exhibit 8?

A. It is also shown in Exhibit 8 by the numeral 20a, which passes through the fuel cutoff valve 20 in Figure 1 of my patent, and it is also shown by the fuel supply conduit that passes through the valve 20 in Pinkerton's structure, as shown in Figure 1. That is the same as I have.

The next element is: a valve in said conduit. In my structure that is represented in Exhibit 8 by the hold valve 20 in the fuel line 20a to the boiler. In Pinkerton's

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structure it is shown by the hold valve 20 in the fuel line to the boiler, indicated by the numeral 20a.

The next element is: means for yieldingly holding said valve open. The means I use for yieldingly holding the said valve open are the spring 77 pressing up against the piston, [63] which, in turn, presses up against the diaphragm 73, and the lower end of the piston is connected to a piston rod 74, which extends down into the valve and holds the valve in an open position. In Pinkerton's structure he uses the same means, which is a spring 77 pressing up under the piston head which is immediately under the leather cup 73. On the lower end of his connection, between the leather cup and piston assembly there is a rod 74 that extends down into and is fastened to the valve 75, which holds the valve 75 up from its seat 76.

The next element is: a compartment. In my structure I show a compartment 72 immediately above the diaphragm 73 in Figure 6 of 2,233,395. In Pinkerton's structure the compartment 72 is immediately above the piston and leather cup 73, and that is the same as it is in mine.

The next element is: a pressure responsive means to respond to pressure in said compartment arranged to close the valve. The pressure responsive means is the fluid that comes from the boiler into the chamber 72 and thereby forces the diaphragm to be flexed downwardly and through the piston and piston rod 74. Immediately under the diaphragm the valve 75 that is attached to the end of the piston rod 74 is forced down onto its seat.

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In the Pinkerton structure the supply of fluid to close the valve comes from the boiler in the same way my fluid does, [64] into the top of his chamber 72, thence pressing downwardly on the piston to which the leather cup 73 is attached, overcoming the spring action 77 and the piston rod 74, to which the valve 75 is attached, which is forced downwardly on its seat 76. That is the same as it is in mine.

The next element is: means for supplying fluid under pressure to said compartment to force said fluid against the pressure responsive means. Means for supplying fluid under pressure to said compartment to force said fluid against the pressure responsive means,—the means that I employ is by the opening of a valve, as shown in Figure 1 of patent 2,199,611, by the downward movement of the float 33, from which the movement is transferred to the lever 20, and the valve in the plug 6 is withdrawn from its seat by the pin 25, which furnishes the means supplying pressure through the pipe 11 to the connection into the top of the valve 25a, as shown in Figure 6 of 2,233,395, and this pressure forces down the piston under the diaphragm 73 and through the stem 74 overcomes the spring action of the spring 77 to force the valve 75 to its seat 76.

In Pinkerton the means for supplying the pressure is by the lowering of the float 33 in Figure 3 of Exhibit 9, and the lowering of the float forces the arm 4 down, to which is attached a valve and seat 15, and by the action of the pin on the back of the valve—pin 9 on the back of the [65] valve stem, the valve is withdrawn from its seat and the steam pressure forces between the valve and the seat 15 through the opening of 25a and thence

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down to the opening 25a and to the top of his fuel cutoff valve, and this pressure then presses down on the leather cup which seals the opening and overcomes the effect of the spring 77 and through the valve stem 74, to which the valve 75 is attached, and the valve is lowered to its seat 76. The action is the same as it is in mine.

The next element is: and non-return means to prevent back-flow of fluid from said compartment to said supply. In my structure, in my original structure my non-return means was the valve shown in plug 6, so that when the water in the float chamber lowered the float 33 through the arm connected to the float rod 20 at 34, it would pull its valve from the seat by the pin 25 and furnish the pressure to operate the fuel cutoff valve. When the float was raised by raising the water in the boiler the float 33 would push the arm 20 through in an upward position until the back of the valve stem came in contact—until the front of the slot in the valve stem came in contact with the pin, and this would force the valve against its seat in the plug 6, and retain the fluid that was entrapped in the chamber 72 to close it. My preferred means of doing this is shown by the check valve 79 and the seat 80. I added this because in [66] my first structure I found that occasionally the valve in plug 6 of Figure 1 drawing of patent 2,199,611 would occasionally leak, and the pressure would pass through the opening between the valve and this seat, and the pressure would gradually build up a pressure in the chamber 72 to such an extent that the diaphragm would be flexed downwardly and close the valve 75 against its seat prematurely. So to overcome this I put a bleed opening, as shown in patent 2,233,395 at point 48a, so that when the float rod

(Testimony of Alva G. Blanchard)

indicated in Figure 3 of the drawing of patent 2,233,395 was raised, that even if there was a slight leak into this passage, the leak would escape through the bleed opening 48a and not build up a pressure to close the valve. When the valve as illustrated in Figure 1 was withdrawn from its seat by a deliberate downward movement of the float 33, the valve would be drawn far enough from its seat so that the pressure leaking from the bleed opening 48a in Figure 3 would not be as much as the entrance of the steam into this valve, and the pressure would then build up in the chamber 71 and through the check valve 80 into the chamber 72.

In the Pinkerton structure he uses only my first means, non-return means that I employed. The fluid that comes into his valve, as shown in Figure 3, comes in on account of the downward movement of the float 3, which puts the arm 4, which is fulcrumed at point 4a on the plug, and forces the [67] valve through which the pin 9 extends, and thereby opens a clearance between the valve and the seat 15, allowing the pressure to come through 25a and build up in the chamber 72 of Figure 2 of Pinkerton's structure and thereby close the valve. This structure, though, is not satisfactory, even though it works in seventy-five per cent of the cases, because the opening between the seat 15 of Figure 3 will often leak when the water is high, and the float 3 is raised and the valve in its seat should be closed, but this leakage passes through the opening between the valve and the seat 15 through the line 25a and thence on down to the chamber 72 through the opening 25a into this chamber and builds up a pressure and often closes the valve 75 and 76, when it is really not desired.

(Testimony of Alva G. Blanchard)

The next element in my claim is: and manually operable means to relieve the fluid pressure in said compartment. When this fluid is entrapped in chamber 72 in my structure of patent 2,233,395, it may be entrapped by the check valve 79 and 80, or the upper means, as indicated, in the plug by the valve hold on its seat by the pin 25. In either event the chamber 72 is closed until it is desired to open the valve deliberately. At this time I employ a manually operated valve 78 to be opened, at which time the fluid emerges from the chamber 72 through the opening 78a to the atmosphere, and the valve is thereby opened. Pinkerton employs the same [68] means, as shown by the manual release valve 78 in Figure 2 of his drawing, which when pressed opens the opening 78a, by which the fluid entrapped in the chamber 72 can be exhausted through 78a to the atmosphere, which permits the spring 77 to force the piston in an upward position, thereby opening valve 75 and 76. It works just like mine.

In the third claim of this patent the first element is: In a safety apparatus for boilers, the combination of a fuel supply conduit. That combination is illustrated in Exhibit 8 by the fuel supply conduit in Figure 1 at 20a. In the Pinkerton structure on the right it is also indicated by the same numeral, 20a.

The next element is: a valve in said conduit. In my structure that is illustrated by the fuel cutoff valve 20, and in the Pinkerton structure at 20, which is the same as mine.

The next element is: means for yieldingly holding said valve open. That is illustrated in Figure 6 of my patent 2,233,395, by the springs 77 which press upwardly

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against the piston and hold the diaphragm up and the valve 75 from its seat 76. In Pinkerton he employs the same means of holding the valve open, with a spring 77 which presses up under the piston and leather cup 73, and through the valve stem 74 he holds the valve 75 from its seat 76.

The next element is: a compartment. I have a compartment [69] 72 immediately above the diaphragm 73, and he employs a compartment 72 immediately above the leather cup 73 in his structure, which is the same.

The next element is: a pressure responsive means to respond to pressure in said compartment arranged to close the valve. This pressure responsive means is that when pressure is applied in the chamber 72, the diaphragm flexes and the piston under it goes down against the spring 77, forcing the valve stem 74 to which is attached the valve 75 to its seat 76. And that is the same in Pinkerton's, the pressure responsive means responds to the pressure in chamber 72, forcing the leather cup and piston 73 against the spring 77 through the valve stem 74, to which the valve 75 is attached, and forces it to its seat 76.

The next element is: means for supplying fluid under pressure to said compartment to force said fluid against the pressure responsive means. The means for supplying the fluid under pressure in my structure is illustrated in Exhibit 9; in Figure 1 of patent 2,199,611, as the float 33 drops in the water, the lever 20 to which it is attached at the point 34 retracts the valve by the action of

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the pin 25 against the back end of the slot in its stem, and thereby removes it from its seat, allowing the steam above the water in the housing there to escape between the valve and seat, and furnish the pressure through pipe 11 down to the connection [70] and to the fuel cutoff valve, Figure 6 in 2,233,395, and into the chamber 71 and through the valve 79 and 80 into the chamber 72. In the Pinkerton structure the same means is employed for supplying pressure by the operation of a float through the arm 4, and the valve is withdrawn from its seat by the pin 9, and the steam pressure above the water passes between the valve and the seat 15 through the opening 25a and into the chamber 72 through the opening 75a, and furnishes the pressure to move the piston downward, thereby overcoming the resistance of the spring 77 through the piston rod 74 to the valve 75, and thereby closing it against its seat 76.

The next element is: and non-return means to prevent back-flow of fluid from said compartment. The non-return means, of course, in the operation of the valve, when the flow of steam through the valve and plug 6 in my Figure 1 of drawing 2,199,611 is going in one direction, it can't flow in the other direction, because it can't do both things at one time. But after the valve illustrated in the cross-section in Figure 6 is closed and the water level in the housing 1 on Figure 1 is raised back to the right level, the valve is seated by the pin 25 pressing against the outward end of the slot in the

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valve, which forces it into its seat, and thereby is a non-return means for preventing the back-flow of liquid from the chamber 72 to the source of supply, [71] through the line 25a. In addition to this non-return means for the purpose that I have already outlined, I have provided another non-return means, as indicated by the valve 79 closing against its seat 80. This has enabled me to provide a bleed opening in the line from the plug 6 to the fuel cutoff valve for leakage so that the valve will not be opened prematurely. In the Pinkerton structure, Figure 3, his non-return means is shown in the same way; that is, when the float 3 pulls the arm 4 downward and the valve on the seat 15 is retracted from its seat, the flow of fluid between the valve and the seat obviously can be in only one direction at a time. If the flow through the line 25a into the chamber 72 of Figure 2 of Pinkerton's structure is sufficient to close the valve, the operator then begins raising the water level in his boiler. When the water level is raised, the float 3 raises the arm 4 on Figure 3 of Pinkerton's structure, and the valve is seated by the pressure of the pin through the valve stem, and it is seated in its seat 15. After it is seated, the pressure in the chamber 72 is retained through the pipe 25a until it is desired to open the valve manually by the manual release 78.

This structure is the same as I employed at first, but my preferred structure I show by the valves 79 and 80 of Figure 6.

(Testimony of Alva G. Blanchard)

The next element of the third claim is: and manually [72] operable means to relieve the fluid pressure in said compartment and thereby open the valve. That element in this claim is illustrated in Figure 6 of patent 2,233,395 by the valve 78, which when turned in a horizontal position opens the opening 78a, allowing the pressure in chamber 72 to exhaust to the atmosphere and the spring 77 to open the valves by their upward thrust.

In the Pinkerton structure, in Figure 2 there is illustrated by the manually operable valve 78, which opens an opening 78a, which permits the fluid and pressure in chamber 72 to exhaust to the atmosphere, and the upward motion of the spring 74 to open the valve.

Q. Do these Pinkerton structures accomplish substantially the same result as accomplished by the devices claimed in your patents in suit? A. They do.

Q. And do they accomplish them by substantially the same means?

A. They accomplish them by substantially the same means.

The Court: It is now 5:00 o'clock. We have been keeping pretty long hours today. As you know, I was on the bench until 1:15 this morning.

Mr. Jamieson: We will suit our hours to your convenience, your Honor. [73]

The Court: That is all right. It is 5:00 o'clock, and I have been working overtime all this week and last week, and we have all day tomorrow, so we can stop

(Testimony of Alva G. Blanchard)

now. Then we will convene at the regular time and will have nothing else for tomorrow, so that you will have all day.

Mr. Fulwider: Your Honor, could I ask a question? In case we wind up rather rapidly, so that it would come time for argument, would your Honor allow us some time?

The Court: That is always the way. I can see that you want time in between.

Mr. Fulwider: I like to collect my thoughts, your Honor, and if there is time in between, I can do it a little better.

The Court: I will have to think about that and figure it out according to my calendar. The difficulty is I have a full calendar. How is our motion calendar Monday? Have we anything at 2:00 o'clock?

(Discussion between the court and the clerk, as to calendar.)

The Court: We will decide that tomorrow when we get to it. I can't make any promises at this time.

Mr. Fulwider: Very well.

The Court: All right. 10:00 o'clock tomorrow morning.

(Whereupon at 5:00 o'clock p.m. April 1, 1948, an adjournment was taken until 10:00 o'clock a.m., April 2, 1948.) [74]

Los Angeles, California, April 2, 1948;
10:00 O'Clock A. M.

(Other court matters.)

The Court: You may proceed.

The Clerk: Case No. 7734, Blanchard v. Pinkerton, further trial.

Mr. Jamieson: Will you return to the stand, Mr. Blanchard.

ALVA G. BLANCHARD,

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Jamieson:

Q. Approximately what has been your total sales of devices manufactured under the patents in suit since you started?

A. About \$200,000 or over that.

Q. Can you give us an idea of how much your sales amounted to last year in devices manufactured by you under the patents in suit and sold?

A. Last year our sales on those items amounted to over \$58,000.

Q. Are your sales increasing each year?

A. Each year since we started our sales have shown a substantial increase. [78]

Q. Have you any competitors in the devices manufactured by you under the patents in suit?

A. Only this Pinkerton device.

Q. Did anyone else ever infringe the patents in suit?

A. Yes, I had the Reliance Gauge Company of Cleveland, Ohio, make an infringing valve structure.

(Testimony of Alva G. Blanchard)

Q. Were the patents issued at that time?

A. No, that was before my patents issued.

Q. They were still in the Patent Office?

A. They were still in the Patent Office.

Q. When you notified them of your rights, did the Reliance Company cease to infringe?

A. Well, they didn't at first. They applied for a patent on their device and my patent was already in application and the Patent Office declared an interference in the two applications and both of us filed statements of prior conception and they withdrew their patent application because their earliest date of conception was after my date of application, and they also withdrew all of the infringing structures that they had with their dealers and ceased the manufacture of them.

Q. Which patent in suit did that interference and infringement involve?

A. That involved my patent 2,199,611.

Q. Did it involve your patent 2,233,395? [79]

A. No, it did not involve that patent.

Q. Did anyone ever infringe that patent, 2,233,395?

A. No one but Pinkerton.

Q. Since you began? A. Since we began.

Q. Was your action made special in the Patent Office on account of this infringement by Reliance?

A. Yes, it was the subject of a special action because I was able to show that they were infringing it and if my patent was allowed they would be infringing certain claims in it.

Mr. Fulwider: Could I ask the witness to speak up a little? I am having trouble hearing both counsel and the witness.

(Testimony of Alva G. Blanchard)

Mr. Jamieson: I am sorry.

Q. Has anyone ever infringed this patent No. 2,233,395 at any time before it was issued or after?

A. Only Pinkerton.

Q. Would you say then that other than the defendant in this case the public has generally acquiesced to your patent rights in the patent in suit in this case?

Mr. Fulwider: I object to that, your Honor. I haven't raised any objection so far.

The Court: Let me hear the question.

(The question referred to was read by the reporter as [80] follows:

“Q. Would you say then that other than the defendant in this case the public has generally acquiesced to your patent rights in the patent in suit in this case?”)

The Court: That does not mean anything. The only object in bringing in the financial success is to show that it is not a paper patent. But the acceptance of it by the public does not mean anything.

Mr. Jamieson: It goes to the question of pioneer patent, your Honor.

The Court: That does not mean anything at all. A pioneering patent is decided by the prior art and not by the public. Sometimes you think you have a patent, Mr. Gillette paid several million dollars for the Probak blade only to find that he bought nothing because the Supreme Court held that the Probak blade was not any improvement on the article, although it had patents, so that he bought nothing.

(Testimony of Alva G. Blanchard)

Mr. Jamieson: I will withdraw the question. I have some authorities that show the materiality of it, but I think it has been fully shown anyway.

Q. If the defendant infringed here in California, in the Southern District and Central Division, would you have continued to sell the devices manufactured by you under the patent in suit in this district? [81]

A. We would.

Mr. Fulwider: I would like to object to that too, assuming a fact that the defendant did infringe. It is a conclusion.

Mr. *Fulwider*: I will change that. I agree with your objection.

Q. If the defendant hadn't manufactured the devices complained of in this district and sold them for less money than yours, would you have continued to sell your devices manufactured under the patent in suit in this district?

A. We certainly would.

Mr. Fulwider: I still object, your Honor.

The Court: The objection is sustained.

By Mr. Jamieson:

Q. Have you ceased to sell them in this district?

Mr. Fulwider: I object to that. Why he stopped selling in any district isn't material.

The Court: I will sustain the objection.

The only question before me at the present time, gentlemen, is whether there has been infringement and later on the question is raised whether there has been any damages and, of course, as is customary the question of damages is referred, so that any losses resulting from the infringement or cessation of activities is not a question before the court. [82]

(Testimony of Alva G. Blanchard)

By Mr. Jamieson:

Q. When did you first learn of the defendant's infringing activities?

A. In 1939. That was before our patent actually issued.

Q. Have you any record that was made at that time?

A. Yes, I made a trip here to help with our sales, our representative, Mr. Gene McIntyre, and in traveling over the field we discovered a set of the Pinkerton device in the Athens Field, and these I photographed at the time.

These are the photographs that I made.

Q. Did you make any memorandum on the photographs at the time? A. Yes, I did.

Q. What was it?

A. On the back of one of them I addressed our sales manager, C. W. Longwall, as by just his initials, and I said:

“C. W. These are the Pinkerton alarms and fuel cutoff valves referred to in a recent letter. These are the first they have sold for boilers. Pinkerton refused to let us see how they were made inside. If Gene cannot get something—”

The Court: I think that is a self-serving declaration. I do not think you should read that. The main point is to identify the photograph, the legend. You can only read the [83] fact that shows where you took it and what it was. Any self-serving declarations that you made at the time are not material in this case.

(Testimony of Alva G. Blanchard)

By Mr. Jamieson:

Q. Can you identify that as a photograph that has been in your possession ever since 1939?

A. Yes, it has, and I dated it when I took the pictures.

Mr. Jamieson: I would like to offer those photographs in evidence.

The Court: Very well.

Mr. Fulwider: These are photographs, are they, of the Pinkerton installation?

The Witness: Yes.

The Court: Where was that?

The Witness: In the Athens Field.

Mr. Jamieson: May they be marked as Exhibits 13-A and 13-B?

Mr. Fulwider: What was the date of these?

The Witness: It is on the back of the postcard.

Mr. Fulwider: '39?

The Witness: Yes.

The Clerk: Are these admitted, your Honor?

The Court: Yes.

The Clerk: Exhibits 13-A and 13-B in evidence. [84]

(The documents referred to were received in evidence and marked plaintiff's Exhibits Nos. 13-A and 13-B.)

By Mr. Jamieson:

Q. Would you tell us what happened at the occasion of taking those photographs? What you did.

A. We were very much—that is, Gene McIntyre and myself were very much—surprised and I asked him if he knew Pinkerton, and he said he did know Pinkerton, so we went to Mr. Pinkerton's place.

(Testimony of Alva G. Blanchard)

Mr. Fulwider: Your Honor, I would like to move to strike as to what his agent asked him. I don't want to keep making objections and wasting time, but it seems to me that this whole line of testimony and the way it is put on is objectionable.

The Court: Read the question.

(The question referred to was read by the reporter as follows:)

("Q. Would you tell us what happened at the occasion of taking those photographs? What you did.")

Mr. Jamieson: It is preliminary, leading up to a conversation with the defendant.

The Court: Ask him the question directly.

By Mr. Jamieson:

Q. Did you have a conversation with the defendant [85] Pinkerton at about the time of these photographs? A. Yes, I did.

Q. When did that conversation take place?

A. It took place on the same day that we made the photographs.

Q. What day was that?

A. It is August 24, I believe, 1939.

Q. Where did this conversation take place?

A. In Mr. Pinkerton's shop.

Q. Who else was present besides you and Mr. Pinkerton?

A. Gene McIntyre, our representative.

(Testimony of Alva G. Blanchard)

Q. Will you tell us what was said by everyone at this conversation?

A. We told Mr. Pinkerton that we thought he was infringing there even though we hadn't had our patent issued yet, and asked him for information or to see a drawing of the entire structure, and Mr. Pinkerton refused to let us see anything about it, saying that we didn't have a patent yet.

That was about all that took place at that time.

Q. Did you see any Pinkerton apparatus on this structure that was installed with the Union Oil Company in 1939?

A. Yes, I did.

Q. What did you see?

A. Pinkerton made a feed water valve mechanism that operated on a thermostat principle on the side of the boiler [86] and these feed water apparatuses were on the same boilers that our alarms and fuel cutoff valves were installed on.

Q. How long after that first installation of yours in California did you first see a Pinkerton structure like those charged as infringed in this case?

A. It was about eight months later, I believe, seven or eight.

Q. Where did you see it?

Mr. Fulwider: I didn't get that date, the date of your first installation. When was that?

By Mr. Jamieson:

Q. What was the date of your first installation in California?

A. The date of our first installation in California was about the middle of '38 or the latter part.

(Testimony of Alva G. Blanchard)

Mr. Jamieson: Now will you read my previous question, Mr. Reporter.

(The question referred to was read by the reporter as follows.)

(“Q. Where did you see it?”)

The Witness: I don't understand the question. Where did I see what?

By Mr. Jamieson:

Q. Where did you first see the Pinkerton devices that are charged to infringe in this case? [87]

A. In the Athens Field in August 1939. That is when I made the pictures of them.

Q. Did you have another conversation with Mr. Pinkerton after your patent issued?

A. Yes, I did. I had another conversation with him afterwards.

Q. Where did that conversation take place?

A. It took place in his office.

Q. When? A. The first part of last year.

Q. Who else was present besides yourself and Mr. Pinkerton?

A. There was no one else present except one of Mr. Pinkerton's workmen who was in the shop, but not close to us.

Q. What was said at that conversation by you and Mr. Pinkerton?

A. Well, I told Mr. Pinkerton that I was positive that he was infringing, as I had bought a sample of his infringing article, and tried to effect a license agreement with him or settle our differences in some way, and we were not able to get together.

(Testimony of Alva G. Blanchard)

Q. Had you previously sent him a notice of issuance of your patents?

A. Yes, as soon as the patents were issued I sent him a notice and a copy of the patents. [88]

Q. Did you mark the devices manufactured by you under the patents in suit with the numbers of the patents after they issued? A. Yes.

Q. Now have you studied the prior art patents that were cited by the defendant in this case?

A. Yes, I have.

Q. Are you familiar with the construction and operation of Patent No. 7767, reissued June 26th, 1877?

A. Yes, I am.

Q. Will you take a copy of that patent and describe to the court the construction and operation of it?

Mr. Fulwider: I object to that, your Honor. That is part of our defense. I don't think it is part of the plaintiff's case in chief, to go over the pleaded patents and explain them to the court.

The Court: I do not think so.

Mr. Jamieson: Our purpose in that, your Honor, is this: It is our position that this is a pioneer patent and we have been informed the defendants are not going to produce an expert to explain the patents. I feel that your Honor will want some explanation of how they work. I know that it can be done in rebuttal and I thought that it would help to do it at this time, then we have everything in. If your Honor would prefer that we do it in rebuttal, I can withdraw the question. [89]

The Court: Supposing that they should choose not to contest the patent but merely to show infringement, then

(Testimony of Alva G. Blanchard)

all this would be a waste of your time and a waste of judicial time.

Mr. Jamieson: Well, it goes to show the scope and treatment to be accorded the patent.

The Court: We do not try these cases in this manner any more.

Mr. Jamieson: I withdraw the question, and that concludes my direct examination.

The Court: We had a recent case in which Mr. Fulwider was, in which he devoted most of his time to show that he did not infringe.

Very well.

Mr. Jamieson: I withdraw the question and that concludes my direct examination.

Cross Examination

By Mr. Fulwider:

Q. Mr. Blanchard, will you give me your residence address?

A. My home address is 3618 Fairfield, Shreveport, Louisiana.

Q. Now as I recall your testimony yesterday, you said that you went into this boiler control or boiler safety apparatus business because of your knowledge of various explosions. [90] is that correct?

A. That is right.

Q. And you were familiar with the industry at that time? A. Yes, sir.

Q. Were you then manufacturing other equipment?

A. Yes, I was.

Q. Are these photos that were introduced—I believe Exhibits 6 and 6-A—I notice they are all dated June 4,

(Testimony of Alva G. Blanchard)

1937. I assume that is the date on which the photos were taken? A. Yes.

Q. And those photos were introduced merely then to show a typical boiler that had blown up?

A. That is right.

Q. And not boilers that had blown up prior to the entry of you in the field? A. That is right.

Q. Now I believe you also stated that you made a survey of the field but I don't believe you said when. When was it you made your survey of the industry prior to going into the business of manufacturing safety equipment for boilers?

A. Well, you might say I was making a survey all the time because I sold other material that was used on the boilers, such as safety valves and burners and automatic firing [91] controls, and water gauges and gauge cocks, so I was in contact with the field all the time.

Q. You were selling those to the oil industry?

A. To the same people that eventually bought our safety equipment for controlling the feed water.

Q. That was the extent of your survey?

A. Yes.

Q. Now I believe at that time there were other boiler alarms being sold, were there not?

A. Yes, there was half a dozen different kinds of alarms only, that is, high and low water alarms, and just high water alarms and low water alarms.

Q. And were they float operated?

A. They were float operated; yes.

Q. And had a water column attached to the boiler?

A. Yes.

(Testimony of Alva G. Blanchard)

Q. In which the float moved up and down?

A. Yes.

Q. Did they have needle valves?

A. Yes, they all had needle valves.

Q. I believe you mentioned the Reliance. You were familiar with the Reliance products, weren't you?

A. Yes, I sold Reliance alarms before I started making alarms myself.

Mr. Fulwider: I would like to offer in evidence at this [92] time, if I may, a typical Reliance alarm.

That will be our Exhibit 5.

(The instrument referred to was marked Defendant's Exhibit A for identification.)

By Mr. Fulwider:

Q. Is this typical of the high and low water alarms sold by Reliance, we will say, prior to 1930?

A. Yes.

Q. And it has two levers on it, I believe?

A. They have single valves with a lever attached to each one just exactly like you would take a single valve alarm and put two of them together and operate the levers with separate floats and separate rods. There is no two valves attached to each lever.

Q. That is, each lever has its own valve?

A. Each lever and valve and float and rod is entirely separate, just as though you had a separate piece of equipment on each boiler for each purpose, the high water alarm and the low water alarm.

Mr. Fulwider: I offer this in evidence as defendant's Exhibit A.

Mr. Jamieson: No objection.

The Court: Admitted.

(Testimony of Alva G. Blanchard)

The Clerk: Exhibit A in evidence. [93]

(The instrument referred to was received in evidence and marked Defendant's Exhibit A.)

Mr. Fulwider: I have here a catalog or sheaf of—

Mr. Jamieson: I would like to ask one question. I understood we were not going to go into the *private* art with this witness.

Mr. Fulwider: I am only covering in this, your Honor, what the witness covered on direct.

Mr. Jamieson: I think if he is going to do it I should be allowed to do it.

Mr. Fulwider: We are not going into the prior art as such.

Mr. Jamieson: This is prior art.

Mr. Fulwider: That is true, but this is the particular art that was mentioned in his direct questions.

The Witness: No, it was never mentioned.

Mr. Fulwider: Reliance was mentioned.

The Witness: Reliance single valve alarm. This is the high-low alarm.

Mr. Jamieson: I object to it on that ground.

The Court: Very well. To be consistent I will sustain the objection.

Mr. Fulwider: It will retain its marking for identification though?

The Court: Yes, it will be marked for identification. [94]

The Clerk: To be marked for identification only?

The Court: Yes.

(The instrument previously marked Defendant's Exhibit A in evidence was withdrawn.)

(Testimony of Alva G. Blanchard)

By Mr. Fulwider:

Q. Now in this survey that you made, did you find anyone else manufacturing fuel shutoff valves that were operated by steam from the boiler? A. No.

Q. Had you ever heard of fuel shutoff valves which were operated by steam coming from the boiler in response to a valve, control valve, opening?

Mr. Jamieson: Same objection. That is prior art.

Mr. Fulwider: I would like to say this in justification of it, your Honor, that the witness talked at great length yesterday about his prior survey and in general what the art showed and didn't show.

The Court: I think I will open the whole thing up and let it go in. It does not make any difference technically when it comes in. I was merely trying to keep the continuity in view of your own objections. If you are going to examine him about his knowledge of the prior art and all that, you are opening up the floodgates, and if you do I might as well open it in the first place.

Mr. Jamieson: I will withdraw my objection then. [95]

Mr. Fulwider: I will withdraw the question. That was the last I had on that particular item anyway.

Q. I believe your testimony was—I couldn't hear you too clearly in all respects yesterday—you conceived the invention disclosed in both of your patents in 1933, was it?

A. Of course when I conceived them it would be difficult to say, because I thought about it from '32 or '31 even.

Q. When did you build the first apparatus as disclosed in your patents?

(Testimony of Alva G. Blanchard)

Mr. Jamieson: I object to that on the ground that that is not in issue. It doesn't refer to anything that was raised on direct.

Mr. Fulwider: It was mentioned in direct. As I say, I didn't get it clearly, but I recall he said he either conceived or first made his invention in '33, then he built the first one in '34. I thought this was the first proper time to nail those facts down.

Q. Isn't that correct, Mr. Blanchard, that you did so testify? A. Yes.

Mr. Jamieson: I object to it on that ground.

The Court: I will overrule the objection.

Mr. Fulwider: Will you read the question.

(The question referred to was read by the reporter as follows:) [96]

("Q. Whn did you build the first apparatus as disclosed in your patents?")

The Witness: I think I built the first one in 1933.

By Mr. Fulwider:

Q. I believe yesterday you said '34, didn't you?

A. I sold it.

Q. That was your first sale?

A. I built them and tested them out for some time before I made a sale on them.

Q. Do you have any evidence of your reduction to practice in 1933?

Mr. Jamieson: That is objected to as not proper cross examination.

The Court: I will sustain the objection.

(Testimony of Alva G. Blanchard)

By Mr. Fulwider:

Q. Your first sale was in 1934. What part of '34?

Mr. Jamieson: Same objection.

The Court: Let me look at the answer. You are not attacking it? You are not pleading limitation to a period?

Mr. Fulwider: No, we are not, because this is very material, because one of our principal defenses is that we were manufacturing the same thing more than two years prior to the day of his patent, as we are today.

The Court: That is not cross examination. You are privileged under 41(c), which corresponds to Section—no, I am [97] sorry, 43(b)—which is the equivalent of 2055 of the Code of Civil Procedure in California, with which you have been familiar for 25 years. You can call him back as a part of your case and examine him as a hostile witness and cross examine him.

Mr. Fulwider: I had no original idea of doing this, but I thought the cross examination was proper.

The Court: No, you are limited by the other. That is cross examination too, but it is a different kind of cross examination.

Mr. Fulwider: May I ask this question: Is it proper to inquire on cross examination on anything that he testified to on direct?

The Court: Yes. I am not limiting you to that.

Mr. Fulwider: That is exactly what I am now inquiring into.

Mr. Jamieson: That is what I am objecting to. It doesn't cover anything that was covered on direct.

Mr. Fulwider: He testified yesterday and again today that his first sale was in 1934. I am merely asking him what month.

(Testimony of Alva G. Blanchard)

The Court: Overruled.

The Witness: I can answer that by saying that I was very careful to get my application filed within the time limit that the Patent Office specifies that a thing must be applied for after it is in general use. At that time I don't [98] remember whether it was a 2-year or a 1-year clause, but I was well within that time.

By Mr. Fulwider:

Q. And you don't know when you made the first sale except that it was prior to the time you filed your application?

A. And within the time limit that the Patent Office specifies for applying for a patent.

Q. So it was sometime subsequent to October 1933?

A. The patent was applied for in '35, I believe.

Q. That is right, October '35.

A. Yes. It was within the time limit prior to that date.

Q. When you filed your application you had never heard of Mr. Pinkerton, I take it?

A. No, I hadn't.

Q. I believe the first time you heard of him and his apparatus was when you came out here in '39, was it?

A. No, it was in '38. We sold an installation of our equipment to the Union Oil Company and we had a device in connection with *out* patents for maintaining the water level in the boiler and naturally we wanted to sell them on that too, but they used Mr. Pinkerton's device there because they had used it before, and told us we should be satisfied with the alarms and fuel cutoff valves. That is the first I heard of Mr. Pinkerton. [99]

(Testimony of Alva G. Blanchard)

Q. Well, now, I would like to ask you this question: Was that apparatus that you sold in 1934—by the way, to whom was that sold?

A. It was sold to the Tippet Drilling Company, as well as I remember.

Q. How do you spell that?

A. T-i-p-p-e-t, I believe. I forget just how to spell that, but I remember that is the name.

Q. That was down in Louisiana? A. Yes.

Mr. Jamieson: Same objection. This is attempting to prove some theory of defense and doesn't refer to anything on direct as to where the sale was made or to whom it was made.

The Court: If a sale is testified to then the details are opened up.

Mr. Fulwider: That is all I am asking.

Mr. Jamieson: All right. I am just trying to understand.

The Court: It is the topic that determines the scope of cross examination, and if the topic is referred to, in other words, you say I saw so-and-so on a certain day, and that is all. Then they ask, what about, and all the details of the meeting and all the details of any conversation.

Mr. Jamieson: I withdrew the objection. [100]

By Mr. Fulwider:

Q. Would you answer the question.

A. Will you repeat the question?

(Testimony of Alva G. Blanchard)

(The question referred to was read by the reporter as follows:

“Q. Well, now, I would like to ask you this question: Was that apparatus that you sold in 1934 —by the way, to whom was that sold?

“A. It was sold to the Tippet Drilling Company, as well as I remember.

“Q. How do you spell that?

“A. T-i-p-p-e-t-t, I believe. I forget just how to spell that, but I remember that is the name.

“Q. That was down in Louisiana?

“A. Yes.”)

By Mr. Fulwider:

Q. Was the apparatus sold by you to the Tippet Company, or whoever it was, your first sale, constructed exactly like your patent?

A. I believe it was. I don't remember of making any changes.

Q. Did it have the check valve 78 in the fuel valve?

A. It had that as a secondary check valve and the primary means of course was the float holding the valve seated after the boiler was filled with water.

Mr. Fulwider: I move to strike the last part of the [101] answer, your Honor.

The Court: Yes.

By Mr. Fulwider:

Q. What was the date of your first sale in California? Was that the Union Oil job you mentioned?

A. Yes.

Q. That was in 1938? A. Yes.

(Testimony of Alva G. Blanchard)

Q. I believe you testified that Mr. Pinkerton ran you out of California because he was selling his equipment for less than you sold yours, is that correct?

A. Yes.

Q. Did you make any other sales in California after that Union Oil job before you deserted this market?

A. Yes, we did make a few more sales.

Q. And approximately when was the last one of those sales?

A. I don't remember exactly when the last sale was.

Q. Did you have your own salesman out here at that time?

A. Yes.

Q. Did you sell also through supply houses?

A. Yes.

Q. Did Pinkerton underbid you on any particular job?

A. Yes, he did, but the principal trouble was not the [102] underbidding but we had considerable trouble on account of customers calling us and wanting us to make long trips to the field, and we would get out there and find the device that was giving the trouble was Pinkerton's device instead of ours, and ours was well known because we had spent a lot of money advertising.

Mr. Fulwider: I move to strike that latter part. I am asking if Pinkerton ever underbid him.

The Court: I think you should confine yourself to answering the questions. Ordinarily I do not object to a person giving a non-responsive answer because that is not objectionable, but in a case of this character it is better to be confined to the particular topic.

Go ahead.

The Witness: Will you repeat the question, please?

(Testimony of Alva G. Blanchard)

(The question referred to was read by the reporter as follows:

“Q. Did Pinkerton underbid you on any particular job?”)

The Witness: I think so.

By Mr. Fulwider:

Q. Do you know whether or not that was on low pressure or his high pressure apparatus?

A. I didn't know he had two different apparatuses.

Q. You didn't know that he was making a low pressure [103] apparatus with a single needle valve which operated to sound the alarm whistle and cut off the fuel valve prior to the time he made the apparatus which you saw in '38?

Mr. Jamieson: That is objected to as referring to matters not touched on direct examination; leading and suggestive.

Mr. Fulwider: I was merely describing the low pressure apparatus so he would know for sure when he said he didn't know he was making it what he was talking about.

The Court: Overruled.

The Witness: I don't understand exactly what you mean by low pressure apparatus.

By Mr. Fulwider:

Q. May I put it this way then perhaps: Have you ever seen any apparatus sold by Pinkerton which had a float, single needle valve, two parts leading from that valve, one in which passed steam to the alarm whistle and the other which passed steam to a piston which shut off the fuel valve?

(Testimony of Alva G. Blanchard)

Mr. Jamieson: Objected to as not referring to anything on direct examination.

The Court: I will sustain the objection.

By Mr. Fulwider: ,

Q. You mentioned a boiler of yours at Union Oil, was it? A. Yes.

Q. That blew up? [104] A. No.

Q. And it had your equipment on it?

A. No, it wasn't the Union Oil Company.

Q. I thought you said it was the Union Oil Company.

A. No.

Q. What boiler was it that blew up that had your equipment on it?

A. It belonged to a contractor down in Texas, and I have forgotten the name of the field and the contractor's name.

Q. A contractor in Texas? A. Yes.

Q. That isn't the mud pit job Mr. Jamieson mentioned in his opening argument?

A. Yes, that was the one. His mud pit had broken into his boiler feed pit and he had about one more day to drill and he decided to just fire the boiler on mud.

Mr. Jamieson: I believe I can clear that up. I didn't say mud pit, I said mud plant. The Union Oil Company was a mud plant, not an oil well. I guess you misunderstood me.

Mr. Fulwider: That was the plant in Texas?

Mr. Jamieson: No, out here. The mud plant was out here. The mud pit was in Texas.

Mr. Fulwider: I guess I am thoroughly confused.

(Testimony of Alva G. Blanchard)

Q. Which boiler was it that blew up? [105]

A. Well, the boiler that blew up was down in Texas in a field south of San Antonio.

Q. When was that?

A. I don't just remember the date of that but I think it was in '38 or '37.

Q. Now that had some of Pinkerton's apparatus and some of yours also, was that correct? A. No.

Q. That didn't have any of your apparatus?

A. It had all of my apparatus and none of Pinkerton's.

Q. And that blew up because the mud got in the regulator?

A. No, it blew up because the mud got into the boiler and clogged the boiler up so that they just didn't have any water to evaporate and make steam. It was just mud, and finally the crown sheet got so hot that it just pulled apart with what moisture there was still in the boiler.

Q. There was no Pinkerton apparatus on that boiler?

A. No.

Q. Now did you testify yesterday that a boiler somewhere having Pinkerton apparatus on it blew up?

A. No.

Q. As far as you know, no boiler has blown up with Pinkerton apparatus on it?

A. I haven't heard of any. [106]

Q. I take it then that you have no knowledge of a boiler owned by the Ohio Oil Company operated at Gardena, California, blowing up that had your apparatus on it?

A. No. It wasn't reported to me at all, or to our company.

(Testimony of Alva G. Blanchard)

Q. Did you ever have any trouble with your valves corroding or scaling up, sticking?

A. No, I don't remember of having any trouble but I have changed the material in ours to stainless steel, as I think it will last longer.

Q. Have you ever had any valve stems freeze in the valve apertures?

A. Never have that I know of.

Q. I would like to show you here a valve that says on this Inferno, and ask you if that is one of your valves. Does it look familiar?

A. Yes, that is one of mine.

Q. Don't pull it too hard, but I call your attention to the fact that the needle valves are frozen.

A. They move all right.

Q. They move? A. Yes.

Q. But very little?

A. Well, they need cleaning up. It looks like it has seen about four or five years of service without any attention. [107]

Mr. Fulwider: I would like to offer that as our next exhibit, B.

The Witness: May I see that again? There is something about it that doesn't look familiar to me.

(The article referred to was passed to the witness.)

The Witness: Ordinarily we have a much larger opening for our valves to fit in and there is a seat that is pressed in there too, and these don't look exactly right to me for some reason or other. The valves seem to be loose in the seats but the pin has been tightened up so that the lever doesn't work free.

(Testimony of Alva G. Blanchard)

By Mr. Fulwider:

Q. The little washers in between there are all rusted, aren't they? They seem to be tight there.

A. Well, that could be easily done by squeezing these yokes on them. When we send them out there is more clearance than that in between them, and that evidently has been squeezed to make it work tight that way.

Mr. Fulwider: We still offer it.

Do you want to look at it, counsel?

(The article referred to was passed to counsel.)

Mr. Jamieson: No objection. What number is that?

The Clerk: Is this admitted, your Honor?

The Court: Yes. [108]

The Clerk: It is defendant's Exhibit B in evidence.

(The article referred to was received in evidence and marked Defendant's Exhibit B.)

By Mr. Fulwider:

Q. Throughout your discussion yesterday when you were comparing Mr. Pinkerton's apparatus with your own you used the term throughout, or as you were talking, "my float," "my valve," in identifying yours. You didn't mean to infer, did you, that those individual elements were your own design?

A. No. The only thing that I wanted to infer is that all of those elements combined together as described in my claims, they were mine in so far as they were in that combination that I used in describing my claims.

Q. That is what I thought you meant. A. Yes.

Q. But all the individual elements per se, needle valve, float, and container were all old? A. Yes.

(Testimony of Alva G. Blanchard)

Mr. Jamieson: Just a minute. That is objected to on the ground that it is opening up the prior art again. It is the same objection.

Mr. Fulwider: It is merely carrying forward his own statement of yesterday.

Mr. Jamieson: It is an attempt to prove the prior art.

The Court: I will sustain the objection. [109]

Mr. Jamieson: I move to strike the answer.

The Court: It may be stricken.

By Mr. Fulwider:

Q. Now referring to your '395 patent, which is illustrated in your Exhibit No. 9 and seen best in big 6 of that exhibit, as I understand it you have a check valve 79 between your compartment or chamber 72 and your upper compartment chamber 71, is that correct?

A. Yes.

Q. Now would you explain to me just briefly the function of that check valve and when and how it operates?

A. Well, in my first structure I didn't use a check valve there, I had a solid connection from the illustration Fig. 1 in my patent 2,199,611, and as the float held the valve on its seat up above—

Q. Pardon me just a minute. I am just asking about the check valve. In your first one you didn't have a check valve, is that it?

A. I didn't have a check valve.

Q. Did you have a separate chamber 71 as indicated here from your chamber 72, or did you dispense with that chamber 71?

A. No, I just had an opening there, just as it is to hold the quantity of water.

(Testimony of Alva G. Blanchard)

Q. Was that cast in shape as this is here? [110]

A. Yes, sir.

Q. And this passage that is labeled—

Mr. Jamieson: The “this” doesn’t show in the record.

By Mr. Fulwider :

Q. —Fig. 6 on Exhibit 9, this passage 80 then that has a little nipple in there, a fitting, that fitting wasn’t there, was it? A. No.

Q. So the structure was the same except for the valve 79?

A. I had the water chamber above it to provide a cooling medium for the diaphragm below so that as steam hit it it would have a quantity of water to heat up before it heated the diaphragm.

Q. When did you to your knowledge first install one of those check valves 79 in the apparatus illustrated in Fig. 6?

A. Well, as I started to say, I discovered that often-times I wouldn’t get a good seat on my valve structure above, and while the boiler was operating and the water was up to its proper level, there would be a slight leakage between the valve and seat above in the alarm, and that pressure would come on down into the alarm body and cut the fire off when in fact they had plenty of water in the boiler.

Q. At that time you didn’t have your bleeds 48 here, 48-A? [111] A. That is right.

Q. And you had no bleed or relief valve down here, you had the relief valve I assume at 78? A. Yes.

Q. But you had no bleed anywhere in the line?

A. No, I had no bleed in the line.

(Testimony of Alva G. Blanchard)

Q. When was it that you then first started using your check 79?

A. I put that check in there so that I could put a bleed opening in the line and thus relieve any leakage of the valve.

Q. When was that?

A. That was prior to my sale of any of them. That was during my experimental work on it.

Q. So you never sold any without the check.

A. No, I never sold any without the check.

Q. And in your experimental work you tried the first without the check and then put the check valve in and the bleeds 48?

A. I might have sold some of them without that bleed opening at the very first, but I don't believe I did. If I did I changed them all.

Q. What is the function of this check valve 79?

A. The function of the check valve is to retain the pressure that originally encloses the valve until it is desired [112] to open it manually.

Q. If I understood your testimony yesterday, then when the float drops down the valve opens allowing steam to pass through this pipe down into this chamber 71?

A. That is right.

Q. And that has some water in it and the steam exerts pressure on the water, which in turn exerts pressure on the diaphragm?

A. That is right.

Q. Closing your fuel valve?

A. That is right.

Q. Then as the pressure, or when ever the pressure up here in the line, we will say, or in the boiler is reduced this little check valve immediately closes, is that correct?

A. On my preferred structure.

(Testimony of Alva G. Blanchard)

Q. On the structure shown in your patent?

A. Well, that is my preferred structure. I show the other means up above.

Q. We are just talking about the check valve.

A. Yes.

Q. On the check valve 79 shown in this Fig. 6 it encloses, and then it is impossible to open the fuel valve until someone opens this relief valve 78, is that correct?

A. That is right.

Q. Now that would not be the case, however, if you did not have the check valve 79, would it? [113]

A. Well, if it didn't have the check valve I would have to eliminate the bleed line and that would bring me back into the trouble that I experienced first and which Mr. Pinkerton has.

Q. So if you don't have a check valve 79 you must—

A. Have a closed line.

Q. —you can't have a bleed? A. That is right.

Q. I see.

Now, then, if I understand it correctly, in the form shown in your patent in the one which you are selling, which has the check valve 79, when the float goes down and that operates, it stays shut even though the float goes back up, doesn't it? A. Yes.

Q. And it stays shut even though the float stays down?

A. (Pause)

Q. What the float does has nothing to do with whether or not the fuel valve opens?

A. Oh, yes—no, not when it opens.

Q. When you have the check valve? A. Yes.

(Testimony of Alva G. Blanchard)

Q. The only way you can do is for the operator to go and open this relief valve? A. That is right. [114]

Q. In what you call your old form, in the one that didn't have the check valve 79, when the float was down due to low water the needle valves did not open, did they?

A. Yes.

Q. I mean did not close.

A. They were open when there was low water.

Q. So there was nothing to prevent steam from backing up from your diaphragm chamber, up through the line back into the boiler so long as the float was down?

A. Yes, because you always have pressure above the water when those valves are open and fluid couldn't flow in both directions so it has to flow downward.

Q. As long as the pressure in the boiler is more than the pressure in the valve, why the—

A. Flow of steam is that way.

Q. —flow of steam is down, and when that condition obtains there is no non-return means functioning in the line, is there? A. No.

Q. And when a float is down, even though there is no pressure in the boiler, there is no non-return means?

A. We never leave the boiler that way.

Q. Just answer my question. We will assume that your apparatus is operated here now and doesn't have any check valve, it just has a line coming from the boiler down into [115] this diaphragm. The water goes down, the float goes down, the needle valve opens, steam passes down in here (indicating) and operates the diaphragm which closes the fuel valve? A. Yes.

Q. Now if your float is way down here, we will say (indicating)— A. Yes.

(Testimony of Alva G. Blanchard)

Q. Several inches low. A. All right.

Q. Now there is no way for that float to get back up unless they put some more water in the boiler, is there?

A. That is right.

Q. And until the float gets back up there is nothing that will prevent steam flowing backward up this line except the steam pressure in the boiler?

A. The steam pressure in the boiler keeps it up there.

Q. So if the operator were several miles away, or deaf, and didn't come soon, the fire is out and eventually the steam is going to pass out or is going to get cold?

A. That would be true, but I have never seen a case of that kind.

Q. Well, now, in the normal operation this needle valve assembly up at the top cannot prevent back flow of steam or cannot function, we will say, as a non-return means as long as the float is down here in a low water condition, [116] can it? A. No.

Q. Now I believe in your patent you stated that it was very desirable for this return flow, or the possibility of the return flow of steam to be eliminated, did you not, and that is why you installed the check valve?

A. No, I didn't.

Q. You didn't say that? A. No.

Q. Well, now, I call your attention to page 2, line 30 in column 2, which states this:

“In order to insure against premature opening of valve 75 after it has once been closed in this fashion,—”

Now valve 75 is this fuel valve down there, isn't it?

A. Yes.

(Testimony of Alva G. Blanchard)

Q. So you have the fuel valve closed. Continuing:

“In order to insure against premature opening of valve 75 after it has once been closed in this fashion, the pressure built up in chamber 72 will be retained therein by reason of the presence of check valve 79 in passage 80—”

Chamber 72 is this little chamber right above the diaphragm? A. Yes, that is true. [117]

Q. Continuing:

“—and, before the valve 75 can be opened, the attendant must relieve the pressure in chamber 72.”

That is correct, isn't it? A. That is correct.

Q. Is that a desirable feature? A. Yes, it is.

Q. And that can't be accomplished unless you have this check valve, can it, when the float is down?

A. Well, it is never left that way.

Q. Please answer the question yes or no, then you can explain if you wish. I only need a simple answer.

A. If the boiler was left that way—

Q. Let me postulate this question.

Mr. Jamieson: May he finish his answer? There is a question in the record.

Mr. Fulwider: It is a non-responsive answer.

Mr. Jamieson: You said he could answer it and then make any explanation he wanted.

The Court: In that particular instance, it is more of an explanation than a non-responsive answer. Go ahead.

The Witness: Will you repeat the question, please?

(Testimony of Alva G. Blanchard)

(The question referred to was read by the reporter as follows): [118]

“Q. And that can't be accomplished unless you have this check valve, can it, when the float is down?”)

By Mr. Fulwider:

Q. That just calls for a yes or no answer. Then you can explain your answer.

A. I don't exactly understand the question. If you will rephrase it, I would appreciate it.

Q. Let us assume that the water in the boiler is low.

A. Yes.

Q. Therefore the float is down? A. Yes.

Q. Therefore the needle valve has been opened?

A. Yes.

Q. Therefore steam has come down and has closed the fuel valve? A. Yes.

Q. There is no way that that fuel valve can be re-opened, is there, other than the operator opening the relief valve 78?

A. Are you speaking of my structure there in the patent?

Q. Where you have the check valve.

A. Yes, that is right.

Q. Now if you don't have that check valve, isn't it a [119] fact that there is no way to keep the pressure on this diaphragm except by raising the float either manually or by putting some water in the boiler, so as to close this needle valve? A. That is right.

Q. So that the advantage recited in the patent here, that advantage of stating thusly—

(Testimony of Alva G. Blanchard)

The Court: What are you reading from, Mr. Fulwider?

Mr. Fulwider: Page 2, column 2, commencing at about line 30.

The Court: Which patent?

Mr. Fulwider: That is the '395 patent.

It states there:

“—After it has once been closed in this fashion, the pressure built up in chamber 72 will be retained therein by reason of the pressure of check valve 79 in passage 80—”

That whole paragraph describes the function of the check valve and its advantages.

The Court: I see.

Mr. Fulwider: Now on line 36 it states:

“This can only be done manually by manipulation of a valve 78 controlling a vent opening 78a in the wall of chamber 72.”

Q. Now is this statement correct in your patent, Mr. [120] Blanchard:

“In other words, once the automatic mechanism for cutting off the supply of fuel has been placed in operation, the fuel line cannot be opened up automatically, but must be done manually by the attendant who would, of course, ascertain that boiler conditions has been restored to normal before again cutting on the fuel.”

That is a correct statement, is it not?

A. Yes, that is correct.

(Testimony of Alva G. Blanchard)

The Court: I think this is a good place to stop. We will have a short recess.

(Short recess.)

The Court: You may proceed.

By Mr. Fulwider:

Q. Maybe we can summarize here and come to an agreement as to what we were discussing just before the recess.

The function performed by the check valve 79 is to prevent the accidental or any other opening of fuel valve 75 once it has been closed? A. Not exactly?

Q. It does perform that function though? Put it this way—

Mr. Jamieson: Objected to as already asked and answered. [121]

By Mr. Fulwider:

Q. The principal function of the valve 79 is to hold the fuel valve 75 closed until the operator opens the cock 78? A. No, that is not the principal function.

Q. What is the principal function?

A. The principal function of that check valve there was to make it possible to put a bleed opening in the line conducting pressure to the fuel cutoff valve so that a leak in the valve above would not necessarily close the valve.

Q. So you put this non-return means in here, this check valve 79?

A. So that we could put the bleed opening in the line to it.

Q. And the reason for the bleed opening was because your little needle valves leaked sometimes?

A. Sometimes, and closed the valve prematurely.

(Testimony of Alva G. Blanchard)

Q. That was one function, we will say?

A. That was the principal function we put it in there for.

Q. That was not, however, mentioned in the patent, was it, that function?

A. I don't remember. I could read it though.

Q. I don't believe it is. The bleeds are mentioned but I don't think— [122]

Mr. Jamieson: The patent speaks for itself.

Mr. Fulwider: All right. We will let the patent speak for itself.

Q. However, there is a function mentioned by the patent, the one I read just before lunch, and this valve 79 does perform that function?

A. Yes, it serves that function in addition.

Q. Now that function is additionally referred to at the very bottom of page 2, column 2, starting with the sentence—well, starting at line 69:

“If, perchance, the attendant is not present or fails to respond to the warning and the water level continues to recede, then, when it reaches a still lower point, control valve 13 of the master unit will be opened and the valve 75 in the fuel supply line will be closed, thus shutting down the boiler and, as pointed out, the boiler cannot again be placed in operation until the attendant has manually relieved the pressure in chamber 72 of the fuel valve control unit.”

That is a correct statement, is it not?

A. That is true, but I didn't draw that specification there. If I had I think I would have mentioned all reasons for it.

(Testimony of Alva G. Blanchard)

Q. But that reason is correct? [123]

A. That is one of them.

Q. That is a function? A. That is a function.

Q. And if the check valve 79 is not present then of course that function is not performed?

A. Unless I closed the bleed opening that I put in the line. It works just as well without the bleed opening and without the check valve.

Q. It may work just as well sometimes but you can't perform that function when the float is down unless you have the check valve 79, can you?

A. Well, in operation when a boiler has low water it is never left in that condition. The water is immediately turned on and sometimes they leave it then and let the pressure go down, but they always start putting the water in the boiler as soon as the fire is cut.

Q. How about when the boiler is dry or practically dry?

A. They always do, because it never reaches a danger point when the fire is cut off. You can always throw water into the boiler when the water is cut off.

Q. When the fireman get sthere the float is down?

A. Yes, and he immediately starts putting his water in there.

Q. Now, as a matter of fact, that function of preventing premature opening of the fuel valve and, as a matter of [124] fact, absolutely preventing the premature opening of the fuel valve prior to the action of the operator in releasing the pressure, is used by you as one of your selling points in your catalog, isn't it?

A. No, I don't think it is.

(Testimony of Alva G. Blanchard)

Q. I thought I read it in your little green catalog last time.

A. Please repeat the question.

Mr. Jamieson: May he be shown the catalog?

Mr. Fulwider: Yes.

Q. Referring to that Exhibit 3, page 5 of your catalog, column 1, we find about line 9 of that last paragraph this statement:

“A check valve installed between the condenser and the cylinder head prevents the fuel from flowing again until the pressure in the head is released (and then this is in capital emphasized letters) BY HAND THROUGH A HAND OPERATED RELIEF VALVE. Thus the fuel cutoff valve gives automatic positive action in cutting off the fire and will not let the fire be turned back on until the pressure is released by the fireman after the water level condition has been corrected.”

Is that a correct statement in your catalog of the function of that check valve? [125]

A. Yes, that is correct.

Mr. Fulwider: Thank you.

The Court: Mr. Fulwider, I am sorry but I have an appointment with counsel regarding a matter at 12:00 o'clock—they are already here—and we will cut the noon hour and return at 1:00 o'clock instead of 2:00 o'clock to make up.

Mr. Fulwider: Thank you, your Honor.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:00 o'clock p. m. of the same date. [126])

Los Angeles, California, April 2, 1948. 1:45 O'Clock P.M.

The Court: Gentlemen, I had a conference which took a little longer than I anticipated. We will continue now without interruption.

ALVA G. BLANCHARD,

the plaintiff herein, having been previously duly sworn, resumed the stand in his own behalf and testified as follows:

Cross Examination (Continued)

Mr. Jamieson: Before we resume, your Honor, I would like to offer in evidence as Plaintiff's Exhibit 8 the drawing that has been marked Plaintiff's Exhibit 8, for identification, and offer in evidence as Plaintiff's Exhibit 9 the drawing which has been marked for identification as Plaintiff's Exhibit 9, and, finally, I would like to offer as Plaintiff's Exhibit 10 the drawing which was marked for identification as Plaintiff's Exhibit No. 10, and from which this witness has testified. That was pursuant to the stipulation that was entered into at the beginning.

Mr. Fulwider: We have no objection.

The Court: All right.

The Clerk: Plaintiff's 8, 9 and 10 in evidence.

(The drawings, heretofore marked Plaintiff's Exhibits 8, 9 and 10, for identification, were received in evidence.) [127]

(Testimony of Alva G. Blanchard)

By Mr. Fulwider:

Q. I would like to ask just a couple more questions about this check valve, and then we will leave that. I noticed, Mr. Blanchard, that you located this check valve 79, between this chamber, top chamber 71 and the lower chamber 72. Does it make any difference in the functioning of your apparatus whether or not you have that check valve where it is, between those two chambers, or up at the top of 71, or anywhere in this line along this side of the needle valve?

A. Well, the location of it between those two chambers is the preferred place, but it would work in any place in the line.

Q. As long as it is somewhere downstream in the steam line from the needle valve assembly up to the top?

A. Not necessarily downstream. It would work with a ball right in the plug.

Q. It could be in the plug 6, shown in your Figure 1?

A. Yes, just exactly where the valve screws in, because the steam as it comes into the line condenses into water and it becomes filled solid with water anyway.

Q. That is what I was wondering about. In the normal course of events, is the chamber 71 and most of the line full of water?

A. Most of the line is full of water.

Q. And sometimes it backs up and I imagine comes out [128] of these little vents 48, and 48a; does it ever go up that far?

A. Yes. Of course, you don't see when it comes up all the way. If you assemble it without the bleed nipple, you can tell it is solid with water.

(Testimony of Alva G. Blanchard)

Q. In the normal operation, when the fireman opens this relief valve 78, after he has the boiler repaired, does he let out very much water or just enough to take off the pressure?

A. He only lets off as much as the piston replaces in moving up to its upward position.

Q. Just enough to take the pressure off, to let the diaphragm come up?

A. There is still some pressure on there, but it lets the piston up.

Q. By piston you mean the diaphragm 73?

A. It moves up and down, yes.

Q. When you said "piston," you meant this diaphragm? A. Diaphragm and piston.

Q. Which is the piston in yours?

A. The piston is right under the diaphragm.

Q. This metal along here that doesn't have any number?

A. Well, a number is on the diaphragm, I believe, too.

Q. 73?

A. 73, yes, and the piston is immediately under that. [129]

Q. I see. Oh, while we are on the matter of the diaphragm, I believe you testified that this diaphragm 73 and the cup which you have number 73 of Pinkerton's on your Figure 2 were equivalents? A. Yes.

Q. I assume that also means that your diaphragm assembly, which has the diaphragm plus this metal ring,

(Testimony of Alva G. Blanchard)

plus the stem 74 is the equivalent of the Pinkerton cup and piston and stem?

A. Yes. I said that I considered them the equivalent because both are leakproof. That is, the cup has the same effect as the diaphragm, but they—

Q. Well,—pardon me.

A. I was going to say that is not true with any type of piston. Only a piston with a diaphragm on it, or I mean with a leather cup or something that will expand and fit the walls like a rubber cup or leather cup.

Q. The purpose is to provide a seal?

A. To provide a leakproof seal.

Q. So that any piston without either a cup on the top—

A. Or rubber ring.

Q. —or sealing ring or packing—

A. I wouldn't say those would be.

Q. That wouldn't do it. Well, so long as it is sufficiently sealed so that it will move down in response to [130] the steam movement is the equivalent of your apparatus, I take it?

A. Any type of piston cup that would lie against the wall without too much pressure to seal it, I would consider the equivalent of the diaphragm. There are other types where the pressure expands the packer in the groove that would serve for the piston in there, and while it was would be tight it would not flexible and I wouldn't consider it mechanically equivalent.

Q. We could say any piston and packing that provides a sufficient seal so long as not to allow too much blow-by and still free enough to operate the valve?

A. No, I wouldn't say that would be the equivalent, that would allow any blow-by at all.

(Testimony of Alva G. Blanchard)

Q. Oh, do you want an absolute seal there?

A. It must be an absolute seal.

Q. Why is that?

A. Because otherwise the valve would begin to open gradually, and someone might be working at something else while it was mechanically cut off, and it would create a hazard.

Q. So that preferably you wouldn't want any leak to appear?

A. No leak whatever.

Q. All right. Now, let's talk a minute about the [131] needle valve assembly. I think this enlarged view is better. This patent, the '611 patent is limited to the valve apparatus, isn't it? I mean, all the claims run—

A. May I come over and read this?

Q. I mean this 2,199,611 patent.

A. Yes, that is a division of my first application, which is covered by patent 2,233,395. It is limited to a valve operating structure.

Q. So far as the wording of the claims is concerned, it doesn't say anything as to where the lines go or where they operate?

A. Well, I believe it states they operate different devices.

Q. But what I am getting at, the essence of the invention is a valve mechanism?

A. I would say that it is the opening of a sequence of valves by a particular means.

Q. That is right. Now, then, in your structure you have three valves in a row and each one has a stem protruding to the rear, and each stem has an aperture in it?

A. Yes.

(Testimony of Alva G. Blanchard)

Q. And one of them has a rather small aperture or slot, so that it has a rather snug fit with the pin, which is called 25 in Fig. 1 and 18 in Fig. 2, and then the next valve, the middle valve has a looser fit? [132]

A. A large opening.

Q. And the third one has a still larger opening?

A. That is right.

Q. As I understand, as your float goes down first it opens the top valve which has the snug fit, then it comes down a little further and this pin 18—and 25 is the same pin, isn't it? A. Yes.

Q. —opens the center valve, and then further movement opens the third valve? A. That's right.

Q. Now, let me see. Do you have one of your apparatus here? Referring to your Exhibit 5, this is the same as your patent drawing except it only has two valves instead of 3, doesn't it?

A. That's right.

Q. And as this comes down, you first open the center valve, that is, the one that is in the center here?

A. That's right. The center valve opens first, and then the outer valve second.

Q. And those both are operated by one pin that goes between the ends of this yoke? A. That's right.

Q. Now, in the Pinkerton device, Exhibit No. 12, first I will refer to the drawing here, Exhibit 10, Figures 1 and 2, [133] and calling your attention particularly to Fig. 2,—this drawing is taken, I assume, from that Exhibit 10— A. It is.

Q. And they are substantially the same?

A. Yes, sir.

(Testimony of Alva G. Blanchard)

Q. Then you have the lever arm 20 which operates a valve 15 through a connection by this pin you have numbered 25? A. That's right.

Q. And that is one of the two pins that is shown in the model you have in your hand?

A. This is one of the pins, and the other is fastened into the lever.

Q. Now, the second valve 16 is pivoted with another pin to this link or ring member 2—I don't know that it has a number, but the hole is called 21? A. Yes.

Q. Would you explain the operation to his Honor? Would you like to look at this model a minute, Judge?

A. You see when the lever is working in a horizontal position,—you can see it better by looking up—when the float drops it forces the first lever off the seat. This is the first pin here, and this is the equivalent of it.

Q. May I interject: Will you just describe it there? [134]

A. When it drops so far it pushes the second valve off the seat, by an enlarged hole in the end of this valve here, which is the same as my structure, except my pin goes straight through down to push it up, and he makes the valve in two pieces so as to put this pin further back and makes two pins.

Q. This little link that has the hole in it, that is pivotally connected to the valve? A. Yes.

Q. Here is the valve, and that is the link there that is pivoted, and you have a pin here (indicating) and there (indicating)? A. That is right.

The Court: In other words, he has one additional element.

(Testimony of Alva G. Blanchard)

Mr. Fulwider: That is correct.

The Court: And yours are combined in one element, and he makes two elements perform the same function.

The Witness: Well, I would say—

The Court: That is not an argument. I am saying there are two elements.

Mr. Jamieson: Your Honor, two parts of an element.

The Court: In other words, he has one extra. Well, I don't know what other word you can use than "element."

Mr. Fulwider: Link. [135]

The Court: He has an extra link.

Mr. Fulwider: Or ring.

The Court: Or he has an extra ring or stem.

The Witness: My claim calls for a pin through these valves.

The Court: That is right. But he does not have a pin through the valves. He achieves the same result by having a pin above it and with an extra hole.

The Witness: Couldn't you read this, your Honor,—

The Court: Please don't try to argue law with me, sir. You have a competent lawyer. I just want a description so as to have the facts in the case.

The Witness: Yes.

The Court: I don't like lay persons to argue law with me.

The Witness: Excuse me.

The Court: I have been a judge for twenty-two years, and even with patent attorneys I don't like to argue law. But a witness is a witness. Your lawyer, Mr. Jamieson, although he hasn't tried a case before me that I recall, has a very good reputation in the field, and at the proper

(Testimony of Alva G. Blanchard)

time he will argue the law. I am just trying to give this a description. Let's call it two things instead of one.

Mr. Fulwider: An extra gadget.

The Court: An extra gadget or thingumajig. [136]

Then the judge asked a question and he has answered. The question was if he has two things to achieve the result, where you have only one. Isn't that a fact?

The Witness: Yes.

The Court: All right. That is all I want to know.

Q. By Mr. Fulwider: Now, I believe in the operation of your device your pin—well, let's look at Fig. 1; that is easier. You say your pin 25 both opens and closes the valves, doesn't it? That is, when the pin 25 goes to the right in Figure 1 it opens the valves sequentially, and when the pin goes back to the left it closes the valves sequentially?

A. It will do that if there is no pressure in the boiler, but if there is pressure in the boiler they will close the sequence also.

Q. That is what I said, I thought. I meant to say they open sequentially and will close sequentially?

A. If there is pressure in the boiler, and if there is not they are all closed at the same time.

Q. And the closing and opening are accomplished by the engagement of your pin 25 against the slot walls; isn't that correct?

A. Will you repeat that, please?

Q. Let me put it this way: Let's assume an open position with the float down— [137]

A. Yes.

(Testimony of Alva G. Blanchard)

Q. —and the float goes down the yoke carrying the pin 25, it moves the valves to a closed position, does it not?

A. If there is no pressure in the spring above the water. If there is pressure—

Q. What happens?

A. If there is pressure, the boiler pressure throws the valves over.

Q. The boiler pressure is sufficient to close the valves except for the weight of the float?

A. No, I would say except for the weight of the arm and float.

Q. So that there is no pushing effect by this pin 25 to close those valves?

A. When there is pressure on it.

Q. I see. Now, the same is true in the Pinkerton device, isn't it? A. Yes.

Q. That is, if you have got pressure in the boiler, that is sufficient to push the valves closed, so long as they are not actually held away by the weight of the arm?

A. Yes.

Q. Now, just one more question. That is on these photographs. Let me have those, Mr. Pinkerton. [138]

Now, just so that I will clear on these exhibits, No. 11 is one of the Pinkerton catalogues or brochures. Do those photographs look approximately like the Pinkerton devices that you have seen in the field?

A. I think so.

Q. Now, these photographs, Exhibits 13, 13-A and 13-B, which you took of a Pinkerton job,—in Athens, was it? A. I believe so, yes.

(Testimony of Alva G. Blanchard)

Q. But you don't recall the name of the person or company who owned the installation?

A. No, it was a drilling contractor.

Q. A drilling contractor. When were these taken?

A. On August 24, 1939.

Q. Oh, yes. Now, then, examining this 13-A, this looks to me as though there was some kind of an extra bracket on the outside. Can you explain to me what this business here is? It doesn't jibe with the photograph in the Exhibit 11. Do you recall? In other words, my point is that doesn't look, from what there is there, to be a Blanchard—I mean a Pinkerton installation. This part is Pinkerton's, but what is this gadget stuck on the front of it?

A. Well, it looks to me like the Pinkerton valve, like I introduced into evidence, screwed into this flange that is fastened inside of another flange. There seem to be two flanges, one built on top of the other one. [139]

Q. Do you recall whether or not that was the case? Did you take these photographs, by the way?

A. Yes, I took them myself, and I think it was.

Q. Where did that Pinkerton plug valve come from?

A. Where did this installation come from?

Q. Yes.

A. Well, I gathered it come direct from Pinkerton's, a direct sale.

Q. That is, it was this type of alarm body shown in the catalogue, Exhibit 10, which had instead—

Mr. Jamieson: Not 10.

Q. By Mr. Fulwider: —11, in which had been drafted a plug type valve similar to your exhibit we were just talking about, Exhibit 12?

A. Yes.

(Testimony of Alva G. Blanchard)

Q. Is that your recollection?

A. I believe it was. I believe I could see a bright part of it sticking up from the alarm, and to be bright that way it must have been brass.

Q. Did you at that time investigate to see why somebody had modified this Pinkerton alarm body they had by drilling out part of it and inserting a different one?

A. Well, Pinkerton had just made the installation, and I don't believe anyone had touched it since he made it.

Q. You didn't touch it? [140]

A. No, I didn't. I took these pictures of it, and that is all.

Q. These pictures were taken in August, 1939?

A. That's right; and this picture here definitely shows the Pinkerton fuel cutoff valve.

Q. Yes, that picture, that is Exhibit 13, ties in and seems to be identical with the fuel valve shown in his catalogue, but this—

A. This picture here shows both of them together.

Q. The alarm body shown in 13 and the alarm body in 13-A do not jibe with the alarm body shown in Exhibit 11?

A. That's right.

Q. Do you recall noticing that before your testimony this morning?

A. No, I didn't.

Q. But now you remember that?

A. That these photographs seem to be a little different on the alarm body than in my pictures.

Q. And when you took the photographs you recall there was not an alarm body such as then being generally

(Testimony of Alva G. Blanchard)

sold by Mr. Pinkerton which had a combination of two styles?

A. That was the first I had ever seen of the Pinkerton structure or a Pinkerton alarm or fuel cutoff valve, so I had no reason to suppose they had two or three different kinds.

Mr. Fulwider: Just a moment. Your Honor, I would like [141] to offer at some stage, and I will leave it up to the court as to whether this is the proper stage, the head of the alarm body illustrated in the catalogue, Plaintiff's Exhibit 11.

I would like to have it, and I think we might offer it at this time as Exhibit C, and I can ask the witness if he has seen it.

Mr. Jamieson: Why don't you mark it for identification there?

Mr. Fulwider: That is all right. We can mark it for identification.

The Court: All right.

The Clerk: That will be Defendants' Exhibit C.

(The alarm body referred to was marked Defendants' Exhibit C, for identification.)

Mr. Fulwider: This is the valve assembly of the alarm body shown in Plaintiff's Exhibit 11.

The Clerk: Just a moment while I mark it.

Mr. Fulwider: I would like to ask the witness just one or two questions on it.

The Court: All right.

(Testimony of Alva G. Blanchard)

Q. By Mr. Fulwider: Mr. Blanchard, did you ever see a Pinkerton assembly such as this prior to seeing this one down in Mr. Jamieson's office?

A. No, I never did.

Q. You had never taken apart one of his installations [142] that was made according to this Exhibit C?

A. No. The only installations of Pinkerton that I had seen had these four ports on this flange and a hole tapped in this flange that this could screw into, and just this much of the plug sticking out.

Q. You saw a flange like this, but instead of the flange itself forming the body for the valves—

A. It was tapped—

Q. —it had a hole tapped in, in which somebody had screwed a flange?

A. This is one of Pinkerton's, and that is the way he furnished them when I bought this particular one.

Q. When did you buy that one?

A. It was some time prior to 19—

The Court: Let me see that.

Mr. Jamieson: Is there a hole in that?

Mr. Fulwider: No. Somebody had to bore that out, and put in one of these others.

The Court: I see.

Mr. Fulwider: So far as I know, we have never sold one of these with a hole, where one of these could be put in. Our position is that if there was a hole put in it, it was put there long after it left the Pinkerton establishment.

The Court: Is this the accused device?

Mr. Jamieson: This is the accused device. That is the [143] only one I offered in evidence.

(Testimony of Alva G. Blanchard)

Mr. Fulwider: I assume this is also. It has the same lever and the extra link, the same as this one.

The Court: This is set on a flange and that is set on the plug; that can be put in.

Mr. Fulwider: That is right. It is all a matter of how they are fastened into the housing.

The Court: Is that brass?

The Witness: That is brass.

The Court: All right.

Mr. Fulwider: I would like to ask Mr. Jamieson whether or not he charges our Exhibit C does infringe. I assume he does.

Mr. Jamieson: You have asked me that several times, Mr. Fulwider, and each time I have told you we charged plaintiff's Exhibit 12 to infringe. I don't know what you brought in. We bought this in the open market.

The Court: Well, it is very important to know what device is charged, because in many of these cases, if you find infringement or non-infringement, the question always arises as to what exemplification we have before us. I remember one case in which I wrote an opinion, and I think that was the Holmes case,—

Mr. Fulwider: The garage door case.

The Court: —where there was a garage door involved. [144] We had just one device before us, and then counsel came in and tried to get me in contempt proceedings to pass on another one. So I told him that this wasn't the device we discussed and I wouldn't decide on a summary contempt proceeding whether it is the equivalent; that he should either bring a supplemental complaint or a new action on which I could determine that,

(Testimony of Alva G. Blanchard)

rather than in a summary proceeding. So it is very important that we know what device is or is not accused.

Mr. Fulwider: That is my thought, and I may say for the record, and I will be glad to testify to this, that this Exhibit C is the one I left with you, Mr. Jamieson, for a couple of weeks for you to look over and for your draftsman to make drawings, and I don't know just where it was before, but Mr. Pinkerton brought it to me and I took this over.

Mr. Jamieson: My theory of infringement consists in making, using and selling, and sometimes a device can be made in a factory and some sold and some be on the market.

Mr. Fulwider: We will stipulate that has been sold.

Mr. Jamieson: Then I charge that with infringement. I have no proof of that.

Mr. Fulwider: We will so stipulate, and the evidence will show that we have sold many more of them than we have of the plug type.

Mr. Jamieson: All right. [145]

The Court: Very well.

Mr. Jamieson: Is that all of your cross examination?

The Court: Have you finished, Mr. Fulwider?

Mr. Fulwider: I would like to have marked at this time also, for identification, but not to ask the witness any questions about it, a drawing which shows four views of our Exhibit C. It is rather bulky. It can be marked Exhibit D.

The Court: It may be so marked.

The Clerk: That is Defendants' Exhibit D, for identification.

(Testimony of Alva G. Blanchard)

Mr. Fulwider: And that closes our cross.

(The drawing referred to was marked Defendants' Exhibit D, for identification.)

Mr. Jamieson: Before you close your cross, if I may, since we have charged that you infringe with this, I think it should go into evidence.

The Court: All right.

Mr. Jamieson: Bob, why not put that in evidence now, since it is charged to infringe?

Mr. Fulwider: All right: I will offer Exhibits C and D in evidence.

The Court: They will be received.

The Clerk: C and D in evidence. [146]

(The exhibits, heretofore marked Defendants' Exhibits C and D, for identification, were received in evidence.)

Mr. Fulwider: The drawing is a scale model, and we can testify to it to the extent that I instructed the draftsman, and he told me he did, that he made a scale drawing of the model C.

The Court: All right.

Redirect Examination

By Mr. Jamieson:

Q. You testified on cross examination that you made some of your devices like that shown in Exhibit 9, without the check valve 78. How many of those did you make, and what was the history of that? What is the story?

A. That was made in experimental work, and we didn't sell any of them, that I can remember of.

(Testimony of Alva G. Blanchard)

Q. How many did you make?

Mr. Fúlwider: Just a moment. I think he testified he didn't sell any?

Mr. Jamieson: He said he didn't.

The Witness: I made one, that I am certain of.

Q. By Mr. Jamieson: What did you do with it?

A. Well, we took it up and tapped out an opening between the upper chamber and the lower chamber and put a check valve in it. [147]

Q. Did you test it or use it? A. Yes.

Q. How did you test it and use it?

A. We tested on a boiler in our shop.

Q. What did you find as a result of that test?

A. Well, the particular check valve that we put in, as illustrated in that drawing, with a metal—this metal contact wouldn't hold, and we then put a check valve in with a rubber seat.

Q. I mean the one without any check valve at all.

A. The one without the check valve at all held all right, except when the valve above leaked out of the valve assembly,—when it leaked the pressure would build up and cut the fire off when there was plenty of water in the boiler.

Q. Did you make any attempt to sell any of those?

A. No, we didn't.

Q. Why not?

A. Because we considered that a defect in it, and we sought to overcome that defect.

Q. You testified on cross examination that you withdrew from the California field, but it wasn't because of

(Testimony of Alva G. Blanchard)

the price differential. What was the reason for your withdrawing from the California field?

A. We sold a few of our devices in California after Pinkerton's device was put out, and we advertised extensively, [148] though, in "The Oil Weekly," and "The Oil and Gas Journal," and most of the people in the oil world associated the Inferno Company with the fuel cutoff valve, and in a number of instances our representative was called to the field to correct fuel cutoff valve troubles or alarm troubles, and he would make these overhauls for nothing.

Mr. Fulwider: May I move to strike all that, as to what the people in the industry thought.

The Court: Yes.

Mr. Jamieson: You must not say what somebody else thought.

The Court: That may be stricken.

The Witness: The trouble then was that he was having so much trouble looking after something else that wasn't our business, so he gave the account up.

Q. By Mr. Jamieson: Now I heard you testify on cross examination regarding this Exhibit B. Do you consider that that is in serviceable shape now?

A. No, I don't.

Q. Could it be placed in serviceable shape?

A. Yes.

Q. What would you have to do?

A. Quite often there are customers who return these to us and we have an exchange service. We tear them all apart and clean them up and regrind the valves and seats, [149] and send them back to them.

(Testimony of Alva G. Blanchard)

Q. How often should those valves be serviced or inspected in the regular course of the work?

A. Well, in the operation of the safety unit we show the firemen how to check all parts of it every day, so that he knows when he comes on that it is in good working order, and so far as disassembling the whole unit and repairing them, sometimes that is necessary every year. But I have seen them go four or five years without any attention. The trouble is usually found whenever a new fireman comes on a shift and makes his tests.

Q. Now, you testified that in the defendants' device if the fires went out that the float 3 would be in a lowered position, and then the water was poured into it and that raised the float. Now, what is the procedure in that regard in the ordinary practice, as you know it?

A. Well, in the ordinary practice on a drilling rig, whenever the fire is cut off, ordinarily they are still using steam on the rig, and the fireman rushes and drops everything to get that water back into the boiler as quickly as he can, so that he can get his fire started again before the driller notices the decline in the steam pressure.

Q. What does he do to get that water back?

A. Well, if he hasn't got our feed water control mechanism on, he usually ascertains what is the trouble with [150] his feed water system and maybe cleans a strainer or something of that kind, and gets the water going back in the boiler as quickly as possible.

Q. Is that the first thing he does?

A. I would say it is.

(Testimony of Alva G. Blanchard)

Q. When that water comes into the boiler, how much do they put in?

A. Well, they usually put water in until the whistle stops blowing, and the whistle stops blowing after the opening to the fuel cutoff valve is closed, so that he can open his fire again after the whistle stops blowing.

Q. Does the whistle blow continuously until he fills it with water? A. Yes.

Q. And if he fills it with enough water to raise the float high enough to make the whistle stop blowing, does that stop—does that make a non-return means to the fuel cutoff valve?

A. It also shuts the valve off, that pressure stem to the fuel cutoff valve, when the whistle stops blowing.

Q. Then will it have a non-return means?

A. Then that is a non-return means; no float could come back into the boiler even if the pressure went clear off.

Q. Now, turning to Figure 2 of Exhibit 9, what is the [151] function of the part marked 78a and 78?

A. Of Pinkerton's structure?

Q. Of Pinkerton's structure.

A. That is a manual release valve for releasing the pressure in chamber 72 so that the piston will travel upward and carry the valve 75 with it.

Q. Is there any other use or function for that manual release means? A. No other.

Q. Well, could there be any other use for that manual release means, if there was not a non-return means above it? A. I don't believe there could.

(Testimony of Alva G. Blanchard)

Q. Well, then, doesn't the presence of the manual release means indicate anything to you, as to whether there is a non-return means above it?

A. Well, it would signify that there was a non-return means above it, because that would be the only way for it to be expelled.

Q. Would there be any other use for this manual release in valves 78 and 78a, unless there was a non-return means?

A. I can't see any further use for it, except as a means for opening the valve.

Q. As a practical man in the field, would that indicate or prove to you that there was a non-return means? [152]

A. I think it would.

Q. When you purchased this structure of the defendants, Exhibit B, from the supply company, did you buy it yourself?

A. Well, I ordered it by mail.

Q. And have had it in your possession ever since?

A. I have had it in my possession ever since.

Q. Have you made any alterations in it?

A. I haven't touched it, except with my hands to look at it.

Q. Referring to this device, Exhibit B, is there any different function performed by making one of the valves in two pieces instead of one, like yours?

A. Would you repeat that question, please?

Mr. Jamieson: Will you read it please?

(The question was read.)

A. I can see none.

(Testimony of Alva G. Blanchard)

Q. By Mr. Jamieson: Is there any different result achieved by making that valve in two pieces instead of one?

A. I can see none.

Q. Is there any additional function or result, in addition to yours, that is performed by it?

A. No.

Q. Referring to the two-piece pin, is there any additional function that is performed by making the pin in two pieces instead of one, in addition to the function performed [153] by your pin?

A. No.

Mr. Fulwider: Could I ask what pin is made in two pieces?

Mr. Jamieson: Pin 18 or 25, whatever number you want to call it, in the drawings.

Q. By Mr. Jamieson: Do the two pieces of the pin 18 or 25 in the defendants' structure, Exhibit B, do the work that your pin 18 does?

A. They do.

Q. Do they do any additional work?

A. None that I can see.

Mr. Jamieson: That is all.

Recross Examination

By Mr. Fulwider:

Q. Just one question, Mr. Blanchard. That Exhibit B, from whom did you purchase that?

A. That was purchased from either the National or the Oil Well. I could wire the office and find out exactly, if it is necessary.

Q. That is National Supply or Oil Well Supply?

A. One of those two.

(Testimony of Alva G. Blanchard)

Q. And when was it purchased?

A. I think I have had it on hand for a couple of years. [154]

Q. Let me see. This is '48. Was it bought before or after—let me see. Did you say you notified Pinkerton in 1946? Was that it?

A. Well, I had it in my possession when I come to see Pinkerton, at that time.

Q. That was last year, was it, or was it 1946?

A. No, I believe it was last year, the early part of last year.

Q. You had this a couple of years, you think?

A. About that. The record will show exactly when, but I know it was prior to my visit with Pinkerton about the first of last year.

Mr. Fulwider: That is all.

Mr. Jamieson: That is all. The plaintiff rests. Oh, just a minute. Will you take the stand again, Mr. Blanchard? I would like to ask another question.

Redirect Examination

By Mr. Jamieson:

Q. Referring to Defendants' Exhibit C, will you compare it with Plaintiff's Exhibit 12, and tell me if there is any difference in the action of them.

A. Yes. In Defendants' Exhibit C, on an upward movement of the valve the pin is not in contact with the

(Testimony of Alva G. Blanchard)

front end of the slot at all, even when it is seated, and in the Exhibit 12, which is the structure that I bought from either [155] the National or the Oil Well, when the valve is closed the pin is in contact with the upper part of the slot in the valve, which would make it a non-return means, while in this other structure it might not necessarily do it.

Q. Could the other structure be adjusted to do it?

A. Yes, it could be adjusted to do it.

Mr. Jamieson: That is all.

Recross Examination

By Mr. Fulwider:

Q. This link on the end of the fuel valve, or ring, when the lever is up tight to the length of its stroke, there is play there, isn't there?

A. Let me see. Very little.

Q. But it is a loose connection? You can hear it?

A. Yes. Very little.

Q. It is loose enough so that you can hear the tap on the thing?

A. Yes.

Mr. Fulwider: That is all.

Mr. Jamieson: That is all, Mr. Blanchard.

(Witness excused.)

Mr. Jamieson: The plaintiff rests. [156]

* * * * *

H. L. HARVILL,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Take the stand, please. What is your name, please?

The Witness: R. L. Harvill, H-a-r-v-i-l-l.

The Clerk: What is your full first name, sir?

The Witness: Henry.

By Mr. Fulwider:

Q. Mr. Harvill, are you acquainted with Mr. Pinkerton, the defendant in this suit?

A. Yes, sir.

Q. Approximately how long have you known Mr. Pinkerton? A. Since the middle of 1929.

Q. What was the occasion of your becoming acquainted with Mr. Pinkerton?

A. Well, I took a position as superintendent of the Master Equipment Company in 1929, and that time they were making feed water regulators, boiler feed water regulators, for Mr. Pinkerton in this plant that I was superintendent in of the Master Equipment Company.

Q. When did you leave Master Equipment Company?

A. I left Master Equipment Company in the middle of '32.

Mr. Fulwider: I would like to have these two exhibits [157] marked; this fuel valve as our next exhibit. That will be E, will it?

The Clerk: That is Defendants' E, for identification.

(The fuel valve referred to was marked Defendants' Exhibit E for identification.)

(Testimony of H. L. Harvill)

Mr. Jamieson: What is that?

Mr. Fulwider: That is a fuel shutoff valve. Then I would like to have marked this alarm body.

The Clerk: You want this other marked also?

Mr. Fulwider: Yes, sir.

The Clerk: That will be Defendants' Exhibit F, for identification.

(The alarm body referred to was marked Defendants' Exhibit F, for identification.)

Mr. Fulwider: These exhibits will be identified later by Mr. Pinkerton, but so Mr. Harvill can get away I would like to have them marked for identification, and then I can put them in later. Now we have photos of those.

The Clerk: Mr. Fulwider, would you mind stating which is Exhibit E and which is F? What is a description of them?

Mr. Fulwider: The first one is a fuel valve assembly. The second one is an alarm body assembly. I have three photographs of these models. They are rather heavy, so that I would put these in along with them, because they are easier for the witnesses to handle. [158]

The Court: All right:

Mr. Fulwider: The next exhibit will be a photograph of the fuel valve. This first one will be a photograph of Exhibit E, the fuel valve. That will be this one.

Mr. Jamieson: Why not mark that E-1?

Mr. Fulwider: May we do that, your Honor? Call the photograph Exhibit E-1? It is a photograph of Exhibit E.

The Court: That is all right.

(Testimony of H. L. Harvill)

The Clerk: This is for identification only?

Mr. Fulwider: Right.

The Clerk: E-1 for identification.

(The photograph referred to was marked Defendants' Exhibit E-1, for identification.)

Mr. Fulwider: And as Exhibit F-1 a photograph of Exhibit F.

The Clerk: F-1, for identification.

(The photograph referred to was marked Defendants' Exhibit F-1, for identification.)

Mr. Fulwider: And as F-2 a photograph of a portion of the inside of Exhibit F.

I have a set of these for you, Mr. Jamieson.

The Clerk: F-2, marked for identification.

(The photograph referred to was marked Defendants' Exhibit F-2, for identification.) [159]

Mr. Fulwider: Here they are in their order, E-1, F-1 and F-2.

(The photographs were handed to counsel.)

Q. By Mr. Fulwider: Now, Mr. Harvill, without my taking these up there, will you tell me whether or not you have ever seen devices such as these exhibits E and F?

A. Yes.

(Testimony of H. L. Harvill)

Q. Did you ever do any machine work or otherwise assist in the manufacture of devices identical with Exhibits E and F?

A. Yes, at Master Equipment Company we produced a limited number of both items; 25, I believe, or something like that, prior to my leaving.

Q. Now, these photographs, Exhibits E-1 and F-1, for identification, those two—

Mr. Fulwider: I would like to lift these up if your Honor would wish to take a minute just to glance at them.

The Court: That is all right. Leave them there. I am not a weakling: I can lift that.

Mr. Fulwider: Yes. We don't want to have any accidents here.

Q. By Mr. Fulwider: You say you made those, some of them, when you were at Master?

A. Yes, did the machine work and that sort of thing.

Q. Will you tell me, when did you start on that work? [160]

A. On the boiler alarm valves and the paraphernalia connected with it, we started on that about six months prior to my leaving, which would place it about early in '32.

Q. You mean you left there in 1932?

A. Yes, I left in July or August, '32.

Q. That would be about the first part of 1932, then?

A. Yes.

Q. Now, a part of these are castings, the valve and this yoke? A. Yes.

Q. Were those castings brought in to you for machining? A. Yes, sir.

(Testimony of H. L. Harvill)

Q. Did you have anything to do with making this cylinder on the top which appears to be made out of tubing?

A. I don't recall making a cylinder, doing any of that. Mr. Pinkerton assembled those himself.

Q. Do you recall having seen the assembled unit while you were at Master Equipment Company?

A. Oh, yes.

Mr. Fulwider: I call your attention, your Honor, that it has a piston and cup identical with the piston and cup shown in Figure 2 of Plaintiffs' Exhibit 9. We will have a drawing of that that will show it in detail.

The Court: All right. [161]

* * * * *

Mr. Fulwider: So, we really have two sets of devices here, one made before the patent and one made after the patent. I would like to introduce these for identification. This drawing has a notation "R. Beck 12-19-35" on it, which is an assembly drawing, I guess you would call it. I think this had better be Exhibit E-2. This is a drawing of Exhibit E, so let this be Exhibit E-2.

The Clerk: Defendants' Exhibit E-2 for identification.

Mr. Fulwider: And then Defendants' Exhibit F-3 for identification, [163] a drawing of Exhibit F.

The Clerk: Exhibit F-3 for identification.

Mr. Fulwider: It has a notation, "R. Beck, 12-14-34." Then, as Exhibit F-4, a detail drawing, bearing the notation, "R. Beck, 12-14-34."

The Clerk: Defendants' Exhibit F-4 for identification.

(Testimony of H. L. Harvill)

Mr. Fulwider: This is a detail of the casting. Here is the valve seat. This is the seat for that needle valve. And Exhibit F-5 is a small detail drawing with the notation, "R. Beck, 12-14-34."

The Clerk: Exhibit F-5 for identification.

Q. By Mr. Fulwider: Now, Mr. Harvill, calling your attention to Exhibit E-2, a drawing, Exhibit E-2, can you tell me whether or not that drawing illustrates the mechanism E which was manufactured by you when you were superintendent of the Master Equipment Company? A. Yes, sir, substantially.

Mr. Jamieson: That is objected to because there is no foundation laid.

Mr. Fulwider: This drawing we will tie in by the draftsman who will be the next witness.

The Court: All right.

Q. By Mr. Fulwider: Now, I call your attention to the piston assembly. This drawing has a cylinder and a piston head and a cup. Will you compare that with what you can see [164] here? A. Yes, sir.

Q. That is the same as in Exhibit E?

A. Yes, sir.

Mr. Jamieson: We object to that as leading. You are testifying.

The Court: Well, identifying a drawing I don't think involves any question of that.

Mr. Fulwider: I just wanted to be sure what Mr. Harvill was talking about.

(Testimony of H. L. Harvill)

Q. Now, if I can recapitulate a minute, I believe, before recess, you testified you did machine work on the castings of the device identical with this Exhibit E?

A. Yes, sir.

Q. When you were at Master's, prior to July or approximately July, 1932?

A. It was prior to July, three or four months prior to my leaving there.

Q. And you left in the early part of July, 1932?

A. Yes; somewhere around there.

Q. Now, I just quickly call attention to this other drawing, which is Exhibit F-3. Will you compare it with Exhibit F which we have here, which is this ball and float, and tell me whether or not that drawing is, to your recollection, a fair representation of this Exhibit F as you manufactured [165] it?

A. Yes; that is right.

Q. Will you tell us what work you did on these Exhibits E and F, at the Master Equipment Company, in early 1932?

A. We did all of the machine work, drilling and tamping the holes, lathe work, and Mr. Pinkerton assembled it. There was nothing involved in the assembly except we did not make the float.

Q. But did you see any floats in the devices?

A. Yes; we had a sample float around there, and later on—well, this was a year or so later—we did have something to do with these floats.

Q. After you left the Master Equipment Company in the middle of 1932, what did you do in a business way?

A. I became active a hundred per cent in the operation of my own business.

(Testimony of H. L. Harvill)

Q. That is, you had a shop of your own at that time?

A. Yes; I had a shop of my own at the time that I was superintendent of the Master Equipment Company, which I operated during the hours I wasn't working for the Master Equipment Company.

Q. And subsequent to your leaving the Master Equipment Company in the middle of 1932, did you do any machine work for Mr. Pinkerton on devices identical with Exhibits E [166] and F, in your own shop?

A. Yes; subsequent to that we made jigs and fixtures for him for those items.

Q. When would that be?

A. That would be late 1932, or early 1933.

Q. What were those jigs and fixtures for?

A. They were to accurately locate the holes that are drilled and tamped and for accurately locating the holes where the bolts go through. There were no jigs and fixtures made for the lathework because that is done on an engine lathe by a machinist.

Q. And did you do that lathe work in your own shop after you left the Master?

A. No; we didn't do any machine work for the castings in my plant at all.

Q. The only work you did on it was at Master?

A. Except the jigs and fixtures—we might have a sample for the trial of the jigs and fixtures; that is all.

Q. Before we leave this Exhibit E, it has a little fitting here, which comprises F, and the little universal

(Testimony of H. L. Harvill)

fitting and pet-cock. Those were not part of the work that you did, were they?

A. I know nothing about those. Those are standard purchased parts.

Q. Your work covered the globe valve? [167]

A. The yoke, the cylinder and the cap; that is right.

Q. On Exhibit E and Exhibit F, the machine work for the castings? A. That is right.

Q. Did you make this little lever and valve assembly that is part of Exhibit F? A. Yes, sir.

Q. And that, I believe, is illustrated by this small drawing or these two small drawings, Exhibit F-4, being this casting. Will you tell me if that looks familiar to you?

A. Yes; this is a drawing of the cap only and not of the valve and seat.

Q. Of this casting? A. Yes, sir.

Q. And then this small drawing is a picture of what?

A. That is the actuating lever.

Q. That is the lever arm painted silver here?

A. Yes, sir.

Q. Did you ever do any work for or with Harper's Machine Company or Harper's Machinery Company?

A. Yes; I did all of their die casting, dies and their die castings, or a substantial part of their die castings, on the line of small power tools that Harper's made in the beginning of late '32 and '33 and '34.

Q. Did you know anyone at Harper's by the name of [168] R. or R. C. Beck?

A. Yes; he was a draftsman. [169]

(Testimony of H. L. Harvill)

* * * * *

A. Yes, Mr. Beck was there in the drafting department.

Q. And is that the Mr. Beck we saw out in the audience here? A. Yes; the same Mr. Beck.

Q. And do you know whether or not Mr. Beck knows Mr. Pinkerton? A. Yes.

Q. How do you know that?

A. Mr. Pinkerton came to me and decided he was going to have some drawings, and Mr. Beck was a draftsman at Harper's and I sent or got the two together, so that Beck could make some drawings for Pinkerton. Prior to that time Pinkerton never had any drawings on any of his projects.

Q. Will you tell us a little more of your technical background? You had your own machine shop from 1929 on and you were superintendent of Master. Is there anything more you can tell us as to your technical experience and qualifications?

A. Do you want it before or after?

Q. Say from 1929 on.

A. From 1929, I went to work for the Master Equipment Company in the capacity of superintendent, and left there and started my own business, as I mentioned before, in July, 1932, and this business was development work, die casting [172] work and tools and dies; and I continued in that business, also doing jobbing die casting work as an individual operator, until 1935. Then, in 1935, I expanded my plant a little bit and then incorporated under "H. L. Harvill, Inc.," and moved the plant from the rear of my house, where it was up until that time, down to 38th Street in Vernon. And, in 1939,

(Testimony of H. L. Harvill)

we were still in the same line of business. So that I had developed a line of quality castings known as Aircraft Die Castings. And, in 1939, I built a plant on the corner of Mines Field, Century and Sepulveda, which is now known as the Harvill Corporation. And at the time we built that plant the name of the company I was operating was the Harvill Aircraft Die Casting Corporation. Then I acted as manager and president of the Harvill Die Casting Corporation until July, 1942, when I severed from that company and started another company called the H. L. Harvill Manufacturing Company, on 37th Street in Vernon, which I am still operating in Corona. I moved to Corona two years ago. All that time it was substantially the building of die casting machines and producing quality products for the aircraft industry. In addition to that, we made fuel valves and pumps and developed at one time an ammunition booster.

Q. At the time you were at Master with Mr. Pinkerton and had these castings upon which you did work, similar to Exhibit E, were you familiar with steam-operated valves of that [173] type? Had you ever seen any other valves like that?

A. Yes; during the World War I, I was operating a steam plant for the generating of electric power, and this type of valve is nothing new in the business at all. This particular type of valve has been established in all kinds of combinations so long that nobody would consider it a patentable item.

Mr. Jamieson: We move to strike that as a conclusion of the witness.

(Testimony of H. L. Harvill)

The Court: That may be stricken. What you are to give is facts; not your opinion.

A. That is what I am giving you, is facts.

The Court: You started to say something that was a conclusion. That is the point I have to decide. You can say that everybody used them because they are well known, which is all right.

A. Well, they were in general use in 1917. That I know of because that was my first experience in mechanical steam installations. [174]

* * * * *

Q. By Mr. Fulwider: Will you tell us whether or not you saw a valve operated, prior to 1930, that was constructed substantially like Exhibit E, telling us what differences there were?

A. There were numerous installations of valves of that design; a throttle valve for steam, and which can be normally opened and closed and actuated in the same manner on a reduction high-pressure air regulator.

Q. Describe things that were known only to you prior to 1930.

A. Well, this design here in its exact design. This is normally an open valve. In other words, there is a spring under this piston that holds it open.

Q. That is, referring to Exhibit E?

A. Yes. That is held up this way by a spring and it holds a valve off of the seat here and, if there was air or steam applied, it closed the valve. And it can be turned around—that can be turned around the other way. Where the pressure is applied on this end of the cylinder and the spring put on that end, then you have a governor for a steam engine and a valve will be normally closed

(Testimony of H. L. Harvill)

and, as the pressure increases, it requires more and more steam for the operation of the steam engine.

Q. Did you see both of those types prior to 1930? [175]

A. Yes; I saw them many times.

Q. I would like to call your attention to Exhibit 9, which illustrates a diaphragm-operated valve, indicated in Figure 6, and, also, on the right, it indicates a piston-operated valve, which has the notation "Figure 2." Were you, prior to 1930, familiar with valves which were diaphragm-operated, similar to the one illustrated in this Figure 6?

A. Yes; there were many diaphragm valves in use. One of the simplest forms I can think of at present is the pressure regulator for an ordinary home gas meter, which is actuated with a diaphragm and opened and closed substantially the same as that.

Q. I will ask one more question about the Pinkerton device which is illustrated in Fig. 2 of Exhibit 9 and, also, another form of it illustrated in Exhibit E here. This Pinkerton has a cup here on a piston head or supporting the plate. Can you tell me whether or not other kinds of pistons and seals would be equally effective to this cup arrangement?

A. There are many types of cylinder pistons in cylinders. There is an automotive type, where you have rings which would probably work in several appliances as satisfactory as this. There is the old wing type which they use in aircraft running gear cylinders, which would work just as satisfactory as this, by using different materials for the [176] rings, the same as you would use a different material for the cup, according to the

(Testimony of H. L. Harvill)

application of the heat or the steam or the oil, or whatever it is you have actuating it.

Q. Is there a type known as Chevron packing?

A. There are all kinds of Chevron packings which could be used for the piston just as effectively.

Q. Prior to 1930, were you familiar with other kinds of seals for pistons, which were float-operated, than the one shown in Exhibit E-2? A. Yes. [177]

* * * * * * * * *

Q. By Mr. Fulwider: May I ask you, Mr. Harvill, this? Comparing the piston and cylinder arrangement, which we will call a float-operated or steam-operated valve, shown in Defendants' Exhibit E-2, with the diaphragm-operated valve shown as Fig. 6 of Exhibit 9, in your opinion, do they accomplish the same function, the function being to shut off a fuel valve?

A. Yes; they accomplish the same purpose. And it can be done many other ways.

Q. Would you say, in your opinion, they accomplish that purpose in substantially the same manner?

A. Yes.

Mr. Fulwider: That is all.

Cross Examination

By Mr. Jamieson:

Q. You never saw this valve before today, this particular valve, did you?

A. No; I never saw that before today. I might have made it. I don't know.

Q. But you can't identify this as being a valve that you have ever seen before?

A. The design, yes; I can.

(Testimony of H. L. Harvill)

Q. But this particular valve you haven't ever seen before? [178] A. No.

The Court: Do you mean that you haven't seen this particular exemplification of it, this type?

A. This design, the shape of the valve. I was instrumental in helping put it together, in establishing the dimensions, shapes and the plans. I was instrumental in helping Mr. Pinkerton in getting the valve together, but this particular one I don't know. This particular valve might have been one of those we machined up for Mr. Pinkerton, or it might have been made yesterday.

Q. By Mr. Jamieson: You don't know when this was made, then? A. I don't know.

Q. You have never seen any of these drawings before today, have you? A. No; I haven't.

Q. You don't know when they were made?

A. I know pretty close to when they were made and I would say that the dates on those drawings were very close to exact.

Q. You don't know that except that you read the dates on the drawings, do you?

A. I introduced Mr. Pinkerton to Mr. Beck for the specific purpose of Mr. Beck making these drawings for Mr. Pinkerton, along about those dates, and I have been very [179] closely associated with Mr. Beck ever since, and I know he didn't do any since then for him.

Q. You didn't see these valves that you worked on at the time that you have mentioned they were assembled? They were taken away from your plant, weren't they?

A. Yes, sir.

(Testimony of H. L. Harvill)

Q. So that Mr. Pinkerton assembled them at his plant?

A. Well, I don't know where he took them. We would machine them up and he would take them.

Q. And you made parts that would look like some of these parts?

A. We made assemblies and, as we made them, we would put them together to be sure they would fit.

Q. Did you make the top part?

A. We made the cap.

Q. There was never any part like this on Exhibit E, the top part?

A. No. These parts from here up we had nothing to do with.

Q. The brass part of the cap of Exhibit E you have seen but you have never seen anything above that?

A. I have seen all kinds of parts like that above it but those are standard parts you can get in any hardware store.

Q. But you didn't see them assembled at the plant? [180]

A. No. I don't know anything about that.

Q. And you don't know what the full combination of any of his parts was?

A. No; not of this valve here or anything that went on after it went out. I don't know anything about those.

Q. I will show you a pump governor. Do you know what a pump governor is? A. Yes.

Q. I am referring to the Blanchard catalogue, Exhibit 3, and, at page 5 thereof, there is a drawing of a pump governor, and the title of the particular section of the

(Testimony of H. L. Harvill)

catalogue is "Pump Governor." Do you know what a pump governor is? A. Yes.

Q. Looking at the lower part of this device that is marked Exhibit E, would you say it looks like a pump governor?

A. It is very similar. It is a governing valve.

Q. Could this be used for a pump governor?

A. It could.

Q. Isn't the purpose of making this Exhibit E hollow, with a space through it, so as to put the adjusting mechanism for a pump governor in?

A. Not necessarily.

Q. That is why it is this shape, isn't it? [181]

A. It is that shape so you can tighten it up.

Q. Then, they adjust this nut so as to close—

A. In relation to your piston up above.

Q. And this is the type that is used on the pump governor? A. It is similar.

Q. Will you compare the drawing of the pump governor in the catalogue with this and tell me the similarities?

A. This pump governor has a double valve in the bottom. The valve action can be normally opened or closed, according to the way you adjust it.

Q. Is the top part the same?

A. It is substantially the same; not exactly: You have a piston and a cap and a brass tube, and that sort of thing.

Q. The side body is similar, isn't it?

A. For all general intents and purposes, it is very similar.

(Testimony of H. L. Harvill)

Q. If you saw this apart, alone, without the top part on it, would you say it was a pump governor?

A. No.

Q. Could it be used as a pump governor?

A. Not without the top there.

Q. I mean this part of it. Would that be part of a pump governor? Could that be assembled as a pump governor [182] just as it is, just like the one that is in that drawing? A. No.

Q. What change would you have to make?

A. You would have to make a different casting here and have your double seats in the bottom. You only have one seat in here.

Q. It is just a single valve, isn't it?

A. Yes. You could not duplicate this one because you have a double-acting valve there.

Q. You can have single-action valves as well as double-action valves in governors, can't you?

A. Yes, sir.

Q. You don't have any records back of 1935 of any of these transactions referred to, do you?

A. No; I haven't. I have changed organizations and moved around and my records got kind of bulky. I might find them if I looked.

Q. You are relying entirely on your memory as to those dates, aren't you?

A. My memory and the outstanding events that occurred substantially at the same time, like leaving one organization and joining another one and the earthquake.

Q. That is strictly a matter of your memory, in your memory? You haven't refreshed it from any written documents? A. No. [183]

(Testimony of H. L. Harvill)

Q. So that you have no record or no device or any part that was in existence, since say 1935, like this?

A. I don't know what you mean.

Q. I will reframe the question. You have no record of making any parts like this Exhibit E?

A. I never made any since 1935 of those things.

A. Did you make any before 1935? A. Yes.

Q. Have you any records of those?

A. I have a few records but they are very sketchy.

Q. Do you have any with you?

A. These records here were made then.

Q. Those are not your records, are they, your own?

A. No. But I was working for the Master Equipment Company, and the Master Equipment Company has records pertaining to the construction and the time tickets and the job numbers. And they weren't drawings because the stuff is so simple that we made it—we had a sample and made it from the sample.

Q. And you just made the particular parts you were given to make and you didn't make any other parts that went in the assembly, did you?

The Court: These are all tooled, are they, substantially all lathe work?

A. These parts are sand cast, with the exception of [184] this, which can be a piece of tube, and then they are machined up in a lathe and drill presses.

(Testimony of H. L. Harvill)

Q. By Mr. Jamieson: And the parts you did make, as far as you did go, could have gone into a pump governor or any place? A. That is right.

Mr. Jamieson: That is all.

Redirect Examination

By Mr. Fulwider:

Q. You mentioned the earthquake in response to one of Mr. Jamieson's questions. That is the earthquake that was in March, 1933? A. Yes.

Q. With respect to that earthquake, what is your recollection with respect to the Pinkerton valves?

A. The earthquake came early in 1943—

Q. You mean 1933?

A. 1933, rather. And the work that I did for Pinkerton over at Master was way prior to the earthquake, eight or nine months prior to the earthquake, and I did this work and didn't do any work over in my shop until after the earthquake in 1933. That is when we made the jigs and fixtures.

Q. At the time of the earthquake, you were no longer connected with Master?

A. No; I hadn't been connected with them for eight [185] months.

Q. Where was that Master Equipment Company located?

A. It is at 4481 Blue Mason Street in Southgate. That is just off of Manchester.

Mr. Fulwider: That is all. We will call Mr. Beck.

RUDOLPH C. BECK,

a witness for the defendants, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Rudolph C. Beck.

Direct Examination

By Mr. Fulwider:

Q. Where are you now employed, Mr. Beck?

A. Harvill Corporation.

Q. Is that the Harvill Corporation that Mr. Harvill is now connected with? A. It is not.

Q. Is that the one that he mentioned as being out around—where is it?

A. Century and Sepulveda.

Q. The one he used to be connected with but is no longer? A. Yes, sir.

Q. Where did you become acquainted with Mr. Harvill?

A. I became acquainted with Mr. Harvill when I was [186] working as draftsman at the Harper's Machinery Company. Mr. Harvill was doing contract work for them, I believe, at that time.

Q. Approximately when did you go to work for Harper's?

A. I went to work for them in January, 1933.

Q. How long did you stay with them?

A. I was with them until May of 1936, and was gone from there a short time, a matter of a few weeks.

(Testimony of Rudolph C. Beck)

Q. At the time when you were with Harper's in 1933, was Mr. Harvill doing any work for them on any basis, to your knowledge?

A. Yes; he was. At Harper's Machinery I was on a project of making drawings for a line of woodworking machinery.

Q. Do you remember what they called that?

A. The Wood Wizard line, and that machinery involved the use of a lot of die casting, and Mr. Harvill was tooling and supervising those die castings.

Q. Are you acquainted with Mr. Pinkerton, the defendant in this case?

A. Yes, sir. He was introduced to me by Mr. Harvill for the purpose of making some drawings for him.

Q. Did you make some drawings for him?

A. I did. I made those drawings at home at night.

Q. I call your attention to a drawing here, Exhibit E-2, which has a notation, "R. C. Beck, 4-19-35." Can you identify [187] that drawing for me?

A. There isn't any doubt in my mind at all that this is my drawing, that is, it is characteristic of my drawings. The printing is mine and the signature is mine.

Q. Referring to the date "4-19-35," was it your practice to place a date opposite—

A. It was my practice, as I believe it is the practice of every draftsman.

Q. To your best recollection, is this date the date or is it not the date on which you completed this drawing?

A. I am very positive that is the correct date.

(Testimony of Rudolph C. Beck)

Q. From what did you make this drawing, that is, did you have any parts or sketches or what?

A. The drawings were made up from parts that Mr. Pinkerton supplied me with.

Q. You can refer to this model, Exhibit E.

A. Yes; he had those parts at the time and was desirous of having drawings on them. I was not familiar with this type of equipment.

The Court: Has the witness given the date?

Q. By Mr. Fulwider: What is the date?

A. This one here is April 19, 1935. I did these at home at various times. And I think the dates are given straight around here. Here is "12-13-34."

Q. That is, referring to Exhibit F-5, is that your [188] drawing also? A. Yes; it is.

Q. It bears your name? A. Yes, sir.

Q. And Exhibit F-4 bears the date "12-14-34." What is this date on F-3? A. "12-14-34."

Q. Before we go into that question, will you look at all of these drawings and tell me whether or not they are your drawings and whether or not they were completed about the time of the dates they bear?

A. I am very positive every one of these drawings were made by me on the date written thereon.

Q. The earliest date of any of these is December 14, 1934. Starting with that date, when would you say you started working on any of the drawings pertaining to—

A. I wouldn't be sure of that because I made more drawings, probably on other items probably connected with this, at odd times, in the evenings, and I did work

(Testimony of Rudolph C. Beck)

before this date and it is possible I did work after this date.

Q. While you were working at Harper's?

A. While I was working at Harper's Machinery.

Q. Will you compare this Exhibit E-2 with this model E and tell us whether or not this drawing is a fair representation of that model, or, putting it the other way, is the [189] model E a fair representation of the parts which you said Mr. Pinkerton brought to you and from which you made this drawing E-2?

A. I would say that it is almost identical in principle and proportions.

Q. Now, I call your attention to Exhibit F. This is the bowl and the float. Can you tell me whether or not you made a drawing of castings similar to this?

A. This drawing has a good deal more to it than just this bowl, but the bowl and float on this drawing are identical in principle and proportions.

Q. Here is the rest of Exhibit F. Is this top casting similar to castings which Mr. Pinkerton brought to you and which you drew up on this Exhibit F-3?

A. Yes, they are.

Q. With reference to the detail drawings there, the small drawings, do you find any drawings that correspond to this small casting and float lever?

A. There is a drawing of the lever—

(Testimony of Rudolph C. Beck)

Q. That is Exhibit F?

A. —which is very similar to that.

Q. Is there a detail there?

A. This is the detail of the casting.

Q. That is F-4.

A. This drawing of this casting is identical in [190] principle.

Mr. Fulwider: I think that is all, your Honor.

Cross Examination

By Mr. Jamieson:

Q. Mr. Beck, you don't know what these parts are used for? You just made the parts, is that right?

A. I know what they are for in a general sort of way.

Q. But you don't know what assembly they go into, do you?

A. I know the principle of the valve. It is very apparent.

The Court: Just answer then, if you know, and state what it is.

A. I would have to know to what extent you mean. Shall I explain the assembly to you?

The Court: No; just the general purpose of the whole set-up.

A. Yes; I do know.

The Court: What is it?

A. Do you want this part or this part?

The Court: All of them.

(Testimony of Rudolph C. Beck)

Q. By Mr. Jamieson: Just what you know. May I reframe the question? In other words, you were handed a part like this and told to make a drawing of it, is that right?

A. Yes. [191]

Q. And then you were handed another part and told to make a drawing of it and you did so?

A. Yes.

Q. You didn't make any assembly of the whole thing, did you?

A. Yes. Here is an assembly.

Q. What is it used for?

A. This is primarily a float valve.

Mr. Fulwider: Referring to which one?

Mr. Jamieson: This is Exhibit F-3.

A. Here is a float valve assembly.

Q. By Mr. Jamieson: What is it used for?

A. It is used for—or it might be used for many things. It could be used for blowing a whistle or operating a shut-off valve or operating this shut-off valve.

The Court: Which one do you mean? You are referring to what exhibit?

Mr. Fulwider: E-2 is the shut-off valve.

A. This float valve could operate the shut-off valve at the time water was let out of this chamber.

Q. By Mr. Jamieson: Do you know whether there is any non-return means in this structure, Exhibit E-2?

A. That could mean a lot of things. I would have to have a more definite explanation of what you mean.

(Testimony of Rudolph C. Beck)

Q. Do you know whether there is any manual release to [192] release the pressure inside of this chamber?

A. There is no manual release to release the pressure inside of this chamber on this drawing, no; but one could be attached to this.

Q. There were none on any of the drawings you made?

A. There is none on this drawing, but I can't recall whether there were on any of the drawings.

Q. Is there any such on any of those drawings before you?

A. There is no manual release on any of these drawings.

Q. Is there any means to prevent the pressure in this chamber, as shown in Exhibit E-2, once it has come in there, from escaping?

A. It is prevented from escaping by a gasket seal under the lid and it is prevented from escaping by a cup leather in the cylinder, which is a seal.

Q. Where would the pressure come from to actuate that lever?

A. It would come from this port.

Q. Do you know anything about the parts that go above the port?

A. No, except that I know this might connect with this other valve.

Mr. Jamieson: That is all. [193]

GEORGE WILLIAM ROBSON,

a witness for the defendants, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: George William Robson.

Direct Examination

By Mr. Fulwider:

Q. Mr. Robson, are you acquainted with Mr. Pinkerton, the defendant in this case? A. I am.

Q. Do you know Mr. Harvill, who testified here a few minutes ago? A. Yes; I do.

Q. When did you first—did you ever work for the Master Equipment Company? A. Yes, sir.

Q. Tell me when did you go to work for them?

A. I started to work for Argo and others and then they changed the name to the Master Equipment Company, I think, around 1928, and then I was with them until 1934; 10 years all together.

Q. What was your position or work there at Master?

A. I was a machinist.

Q. Did you work under the supervision of Mr. Harvill, or what was his position? [194]

A. He was superintendent at Master.

Q. Do you have any recollection of when he left Master or how long he was there?

A. In 1932, I think. It was before the earthquake. I think the earthquake was in 1933, and I think he left about 1932.

Q. Calling your attention to this Exhibit E, which is a valve and yoke and piston and a cap, have you ever

(Testimony of George William Robson)

seen valve assemblies identical or substantially identical with that before?

A. Yes; I think I have seen the same valve up there, that we machined.

Q. When was that?

A. Oh, I think that must have been about '32.

Q. And where was that?

A. At the Master Equipment.

Q. Can you see this model down here on the floor?

A. Yes.

Q. The float valve body and the casting and the rest of it is over here, this little top casting with the float lever. Did you do any machine work while you were at Master on any one of these parts?

A. Yes, sir; I think I machined parts similar to them there and the flange.

Q. What can you tell me as to the earliest date of your [195] recollection when you did any of that machine work? First, I will ask you this question. Was it while Mr. Harvill was superintendent of the shop, do you recall?

A. I think I made parts there before Mr. Harvill came in there.

The Court: Can you fix a date or year?

A. 1931 maybe.

Q. By Mr. Fulwider: '31, you say, before Mr. Harvill came?

A. Yes; maybe a little while before he came in.

(Testimony of George William Robson)

Q. Does that apply to both Exhibits E and F?

A. No; this one in particular.

Q. Pointing to this little bracket and float valve lever?

A. Yes.

The Court: Has that been identified yet as an exhibit?

Mr. Fulwider: It is part of F. I took it apart so we could see the inside.

Mr. Jamieson: That is a single valve, isn't it?

Mr. Fulwider: Yes; that is a single valve.

A. There is one needle valve in there, and I see there are two ports, one on this side and one on the top.

Q. Do you recall both of those being controlled by this single valve?

A. When I was there we didn't do any assembly work. We [196] just machined the parts. I think he took those samples and assembled them.

Mr. Fulwider: I think that is all.

Cross Examination

By Mr. Jamieson:

Q. Mr. Robson, you didn't know what these parts were used for after they left your hands, did you?

A. No; I didn't.

Q. And you were just given a print and told to make one part and passed it on?

A. No; I don't think we had a print.

(Testimony of George William Robson)

Q. How did you make the part, then?

A. I think we just had a free-handed sketch.

Q. From that sketch, you made a part that looked like that, is that it? A. Yes.

Q. When did you first see this particular part?

A. I think I saw it only today.

Q. Have you seen any of these parts before today?

A. I have seen that part in Pinkerton's car over a week ago,—

Mr. Fulwider: Exhibit E.

A. —or something similar, but I couldn't say it was the same one.

The Court: Do you mean you have seen something of the same kind but not this particular one? [197]

A. Yes.

Q. By Mr. Jamieson: You don't know what it is used for, do you? A. No.

Q. You don't know what the complete assembly is?

A. No.

Mr. Jamieson: That is all.

A. I just got the sketch and was told to make that, and that was all there was to it.

Mr. Fulwider: Thank you, Mr. Robson. That is all. May we take a recess, your Honor?

The Court: All right.

(Short recess.)

The Court: All right, gentlemen.

Mr. Fulwider: We will call Mr. Brown.

ERLE J. BROWN,

a witness for the defendants, having been first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: E. J. Brown.

The Clerk: What is your full name?

The Witness: Erle.

Direct Examination

By Mr. Fulwider:

Q. What is your address, Mr. Brown? [198]

A. At present I am living in Ventura.

Q. For whom do you work?

A. The Continental Oil Company.

Q. How long have you been with the Continental Oil Company? A. 21 years.

Q. What is your position?

A. I am construction foreman.

Q. At Ventura? A. At Ventura.

Q. Were you ever employed by Continental at Seal Beach, California? A. Yes.

Q. During what years, approximately?

A. Well, the first fifteen years, I would say, of my employment.

Q. And that commenced when?

A. The 9th of March, 21 years ago.

Q. 1927? A. Yes.

Q. Are you familiar with the present line of boiler alarm apparatus that is sold by Mr. Pinkerton, as illustrated by Plaintiff's Exhibit 10, or 11, this little brochure which is Plaintiff's Exhibit 11? Are you familiar with that line of equipment? [199] A. Yes.

(Testimony of Erle J. Brown)

Q. Did you ever see any boiler alarm and fuel valve shut-off equipment of Mr. Pinkerton's while you were at Seal Beach? A. I did.

Q. Will you tell me approximately when that was and the circumstances involved in your becoming acquainted with that equipment? A. Well—

Q. First, I will say was that equipment the same as this catalogue or was it a different style?

A. Well, that is asking a lot from memory, to go back that far. It was, yes.

Q. Let's skip the catalogue. Just tell us whether or not Mr. Pinkerton ever installed any boiler alarm and fuel valve shut-off equipment, that was responsive to low water in boilers, at Seal Beach? A. He did.

Q. And approximately when was that?

A. Well, somewhere between June of 1932 and February 15, 1933.

Q. How do you fix June of 1932?

A. Well, we had a boiler explode at Seal Beach during the time that our district superintendent, Mr. Van Slack, was there, and he died on the 15th of February. And we had taken [200] precautionary measures between the time this boiler blew up and before he died. That is the only way I can establish those dates.

Q. I believe he died on the 25th.

A. Was it the 25th? It was just before the earthquake come.

Mr. Fulwider: I might just as well put that certificate in now, a certified copy of the death certificate of Frank Van Slack, whose death is a landmark date with Mr. Brown. Mr. Van Slack was superintendent of that Seal Beach area.

(Testimony of Erle J. Brown)

The Court: All right; it may be received.

The Clerk: Defendants' Exhibit G in evidence.

Q. By Mr. Fulwider: Did the apparatus which Mr. Pinkerton installed for the Continental Oil Company, at Seal Beach, between June or July, 1932, and Mr. Van Slack's death in 1933, have a float? A. Yes.

Q. Was it float operated? A. Yes.

Q. I call your attention to Exhibit F, which is this on the floor, comprising an alarm body, with a float in it, and a bracket casting that fits on the top, which has a lever, and which operates a needle valve coming out, and there are two ports coming out. Is that equipment similar to what Mr. Pinkerton installed for you people in 1932? [201]

A. There is some detail I couldn't be certain of because my work was confined mostly to installation of the equipment from the mechanical standpoint, and I wouldn't be able to identify that arm, for instance, or that, but I do know it had a float because we had taken it apart and looked at it, but we were concerned chiefly with the outside installations as a pipefitting crew.

Q. Tell me, when the water in the boiler became low and the float went down, what happened?

A. When the water got low and the float went down, there was a piston action there that would cause the whistle and the fuel in the fuel line to be shut off.

Q. That is, there were two steam lines leading from the body which was located up at the water level on the boiler? A. Yes.

Q. Similar to this Exhibit F, and one line led to a whistle and one to a fuel shut-off valve, is that right?

A. Yes; that is right.

(Testimony of Erle J. Brown)

Q. Do you remember whether the fuel shut-off valve you had in the lease of the Continental in Seal Beach was similar to this Exhibit E?

A. That is just another valve to a pipefitter. It could have been that identical valve or it could have been one with many changes but, in working there, I know it was one similar to that. [202]

Q. Do you know whether or not the valve that was installed at Seal Beach had a piston in it which was operated by steam pressure? A. Yes; it did.

Q. And did a movement of the piston close the valve?

A. The movement of the piston closed the valve; yes.

Q. And the steam to move the piston came from the boiler when the float went down?

A. Yes; that is right.

Q. And then I believe you said a whistle blew also?

A. That is right.

Q. Did those two things happen at the same time, or do you remember? A. Well, I don't know.

Q. Calling your attention to this valve, Exhibit E, and the drawing of it here in front of you, Exhibit E-2, in 1932, did you have any familiarity with piston-operated valves? This drawing, I might mention, shows a valve down here at the bottom, and a yoke and a valve stem goes up and is hooked onto a piston here, which has a cap and float, which can be admitted to the top of the cylinder. With that much of a description of that, were you familiar at that time with valves of that nature?

A. Of that nature; yes.

Q. Did they accomplish substantially that purpose? [203] A. They can be made to do that.

(Testimony of Erle J. Brown)

Q. Can you tell us anything about in what fields or what kinds of valves you have in mind?

A. There is pressure regulators, governor valves and things that are operated with a piston and numerous little things not manufactured and unpatented gadgets that people make to take care of their own things. This is nothing new so far as—

Mr. Jamieson: We move to strike that out as a conclusion.

The Court: It may be stricken. You may state whether you have seen devices like this. Have you?

A. Yes. I could go back to 1928 or 1929.

The Court: All right.

Q. By Mr. Fulwider: Can you tell me whether or not the fuel valve that was installed for Continental at Seal Beach, in 1932 or 1933, had any fittings similar to these fittings which are on the top of this Exhibit E?

A. Well, that is getting into rather a minute detail but—

The Court: Generally.

A. Had there not been one at that particular place, I believe I would have put one on for my own protection. It has a steam connection to this F. It has a safety feature that I would be watching for. I would want it on there so I [204] would have some way of defending myself against hot steam.

Mr. Fulwider: I have a drawing here. This is a drawing of a typical installation. I am not sure whether it is more than an artist's conception but it is illustrative at least, and it is the only thing we have of the type of hookup. May that be marked for identification as our next number?

(Testimony of Erle J. Brown)

The Court: All right.

The Clerk: Defendants' Exhibit H for identification.

Mr. Fulwider: This has a notation, "Drawn by A. J. Allen," and the further notation, "7-1-35." That is a few months prior to the filing of the application.

Q. This is a drawing, of course, that was made after your installation but, looking at it for comparative purposes, can you tell me whether or not the installation at the Continental lease in Seal Beach was similar to this and, if not, in general how it varied, so we will have some sort of a picture of what that was?

A. Yes; in general principle, this is the same. Of course, our hook-up was different than this because this shows it shutting off the individual fuel and our fuel entry into the fire box was different than this.

Q. Let's take them item by item. Starting up here with the alarm body, is that the approximate location of the Pinkerton alarm body there at Seal Beach?

A. Yes; I would say that is, and that could be anywhere [205] in the dome of the boiler.

Q. And there is a line or two steam lines that lead out of this bracket; one goes up here to this line, which is hooked up to a whistle through a piston valve there, and then there is another steam line comes from this top assembly down into—

Mr. Jamieson: We object to counsel testifying on the ground it is leading and suggestive.

(Testimony of Erle J. Brown)

Mr. Fulwider: I am just telling him what is on the drawing and then it is up to him to say whether or not it is similar.

A. I can answer. It is similar. We had no drawing to work from when we made it. We made the installation and that was that.

Q. By Mr. Fulwider: Suppose you just give us, in your own words, a description of that Pinkerton device.

A. Without the drawing?

Q. Yes; without the drawing.

A. Pinkerton was there and we were supposed to do the work for him. Some of the details I remember was boring and drilling and tapping the hole in the side of the boiler, at the side of the boiler proper. It was rather a difficult proposition to get in between the two hot boilers and drill that hole and hand-tap it, particularly for a man of my size. There isn't very much room. And it had to be done with one shut [206] down and with the one next to it alive. And we thought at that time it was a rather ridiculous installation. It was something new. And we thought we were being abused by having to do it under those circumstances. That is one thing that comes definitely to my mind, that Pinkerton was there. Following the blow-up of the other boiler, though, we felt we had to have something and then, after we began to see that he really had something, we went ahead and installed it.

Q. Who gave the orders for the installation? Who was in charge there at that time?

A. I wouldn't remember who gave me those. My immediate superior was Fred P. Miller. He was the lease production foreman under Van Slack and I don't know

(Testimony of Erle J. Brown)

whether he did it or whether Van just brought it over and said, "Brownie help him put it in." We were not very formal in those days.

Mr. Fulwider: I believe that covers it, your Honor.

Cross Examination

By Mr. Jamieson:

Q. What was your position at the company at the time that this installation you have testified about was made?

A. I was a gang pusher.

Q. What did your duties consist of?

A. That was generally construction work, pipe work, gas and oil separators, pipelines and boiler installations.

Q. Did you have blueprints to work from? [207]

A. On occasions; yet.

Q. At the time of this installation?

A. Do you mean for this particular job?

Q. Yes.

A. Well, I don't remember whether I did or not.

Q. Did you have drawings of any kind on that job?

A. I don't remember.

Q. Have you any drawings now that would show what was in that job? A. No.

Q. Were you in charge of the work?

A. In charge of the installation; yes.

Q. You were in charge of the installation for Mr. Pinkerton, is that it? A. Yes.

Q. And you did what he told you to do?

A. That is right.

Q. Did he give you the whole job or piece by piece?

A. I wouldn't remember.

(Testimony of Erle J. Brown)

Q. Do you remember where the parts came from and what they looked like?

A. I don't understand your question.

Q. What part do you remember, that you saw at that time, that you remember of your own memory now?

A. The whole assembly. [208]

Q. Name one part that you remember.

A. That one that you have there on the floor, that is in two pieces.

Mr. Fulwider: Exhibit F.

Q. By Mr. Jamieson: What did you call it there at that time?

A. I don't remember what we called it.

Q. Can you describe it from your memory, without looking at it and saying it was something like they have shown to you today?

A. Yes.

Q. Will you do so?

A. It would be a cylinder that would have room inside of it for a float and then for a cap on the top, that bolted together at approximately the center, and probably fastened together with five-eighths bolts.

Q. What was inside of the cap?

A. I wouldn't know.

Q. Do you remember what was on top of the cap?

A. No; I don't recollect right off the bat. I don't know.

Q. I want what you remember.

A. Well, I don't remember.

Q. Do you remember what was below the cap?

A. No. [209]

Q. Do you remember what was to the side of the cap?

A. No; I don't.

(Testimony of Erle J. Brown)

Q. Do you remember what the cap—or the function it performed?

A. If I have to give the answer from memory, I can't, but, if I do from my knowledge, I can answer.

Q. I want to know what you remember about it.

The Court: If you know what it was, it shows that your recollection is good.

A. I don't remember whether I got my ideas on it or my knowledge of it from what I saw then or from what I have seen since as to the assembly that they have there, the float that it is carried in. We have floats in steam traps, gas traps and water traps like that. So a float assembly is nothing new.

Q. Br Mr. Jamieson: So you don't remember the details of that particular assembly that you have described, from memory, do you?

A. Well, yes.

Q. Then, will you describe them? There was a cap, and what else was there?

A. Well, there were openings for pipefittings. [210]

Q. Where were those fittings or those openings?

A. Common sense would tell me there would be one on top and one on the bottom, but I don't remember whether—

Q. You don't remember what they looked like?

A. No; I don't.

Q. Do you remember what work they did, what function they performed.

A. Why, yes.

Q. What function did the pipe perform?

A. The pipe was to carry water from the boiler.

(Testimony of Erle J. Brown)

Q. What did it carry it for?

A. To get it up into a position where it could operate the float.

Q. Was the float operated by water?

A. It could have been or could have been operated by steam.

Q. Well, which was it? Do you know?

A. Yes. It was operated by water when there was sufficient water there to operate it.

Q. Do you know whether there was a valve in it?

A. No; I don't know.

Q. Do you know whether there were any arms on the valve?

A. Are we still talking about that assembly down there?

Q. I am talking about the one that you say was so in- [211] stalled down there at the company that you were employed by, on the date that you mentioned on direct, that particular installation.

A. Do you mean that part of the installation?

Q. I don't care about these drawings but I want to know what you remember of your own memory of what was constructed down there at the Continental Oil Company lease, I think you said, prior to 1933. I want to know what parts you can remember of your own independent memory and what they did.

A. I wish I knew just exactly what you want me to give you.

The Court: He is trying to test your recollection to see if you remember the device that you said you knew of at that time; that is all.

A. That is asking an awful lot of memory.

(Testimony of Erle J. Brown)

The Court: He is not trying to show that you remember. He is trying to show that you don't remember. He is cross examining you.

Mr. Jamieson: I don't think anybody could remember that long and that is why I am asking these questions.

A. I have installed many such gadgets since, doing the same job.

The Court: Prior to what date?

A. Well, it has been my work since 1926. [212]

The Court: What is the nearest date of which you have a very distinct recollection so that you can remember the details on this particular device? What is the earliest date?

A. That goes back to 1932, from 1932 to 1933; the latter part of 1932. That is tied in to the explosion of that boiler because I know that Mr. Van Slack was there when we put on the device.

Q. By Mr. Jamieson: Did you make any other installation besides that one single one you testified about?

A. No.

Q. When was the next installation you made after that of any Pinkerton equipment?

A. I didn't install any other after that.

Q. That is the only one you have ever installed in your whole life? A. Yes.

The Court: He has answered three or four times. Please don't repeat the question.

A. But I have seen others.

Q. By Mr. Jamieson: Have you seen others that were installed?

A. After they were installed; yes.

(Testimony of Erle J. Brown)

Q. When did you next see one after it was installed?

A. There was one up in the San Joaquin Valley on a set of boilers up there. [213]

Q. When? A. In 1939 or 1940.

Q. So that you saw only one from this first one until the one you saw in 1939, is that right?

A. That is right.

Q. Going back to the first one that you helped install in 1933, what else do you remember about the construction of it, if anything? What other parts did it have in it?

A. In addition to the ordinary piping and things that go with it?

Q. In addition to the cup and pipe, and what else did you have?

A. There was a manifold or tube running up fastening to the steam manifold up on top of the boilers, and to that a piston-operated gadget, I believe, that fastened itself to a whistle.

Q. There were no valves it it, were there?

A. I wouldn't remember that.

Q. There was no hand mechanism to operate, was there?

A. I wouldn't remember that, either.

Q. There was no manual release?

A. No; I wouldn't remember that.

Q. There were no slots in the valve stem?

A. I didn't see that. [214]

Q. There was no diaphragm in it?

A. I wouldn't remember.

Q. There was no leather cup or packing? You wouldn't remember that?

(Testimony of Erle J. Brown)

A. Why, no. A construction crew doesn't get into those details if it is not part of their work.

Mr. Jamieson: All right, that is all.

Redirect Examination

Q. By Mr. Fulwider: Will you tell us what you do remember, without respect to these models? Particularly, what was there and how did it operate?

A. It was just one of those jobs that is given you to do. Pinkerton was there to supervise it and I was there to control the men and have them do what was needed to be done. He said, "We are going to do this and do it this way and that way." We were particularly and chiefly concerned with the manual work that went with the installation of it. Curiosity perhaps prompted some of us to delve into some of these but very little.

Q. That apparatus that you did install, or assist Mr. Pinkerton in installing, looking at it from the outside, what did it comprise and what did it do?

A. I would say you could call it about three-part mechanism, operated with a float device, or the central part of the mechanism close to the boiler, with pipe running from [215] that to the boiler, to the water chambers in the boiler, one on the side and one on the top; and from that there was piping ran down to the control valve that was put on the fuel gas line. I don't remember whether that went to each individual boiler or whether it went to the master line. That is fairly, that is, definitely, hazy. We have changed our method of installing piping and fuel gas going into the boiler several times since then, and I don't remember what that was like since then.

Q. Was there a whistle in connection with it?

(Testimony of Erle J. Brown)

A. There was. I can remember I heard it.

Q. How long did that installation operate there at Seal Beach, to your knowledge?

A. I really don't know. As I have a recollection, the plant was changed within a year or a year and a half after that was put in. We moved the dehydrolater plant where this was.

Q. Did work up until the time you moved the dehydrolater plant?

A. So far as I know.

Mr. Fulwider: That is all.

Re-cross Examination

Q. By Mr. Jamieson: Did you ever hear the whistle blow? When you say it worked, as far as you know, what did it do? [216]

A. Well, what does a whistle do when it blows?

The Court: Describe it for the record.

Q. By Mr. Jamieson. Did you ever run low on water and have to use this equipment?

A. No; not to my knowledge.

Q. So you never heard the whistle blow?

A. Yes; we tested it. But it never worked during the time I was there.

Q. In actual operation, did it?

A. It could have but I wasn't there.

Q. You didn't hear it operate?

A. I wasn't there.

Q. It might have been a complete failure, might it not?

The Court: That is a conclusion. Ask him if it worked.

Mr. Jamieson: There is a difference between testing and actually working if the fuel gas line—

(Testimony of Erle J. Brown)

The Court: But you are asking for a conclusion or whether there was a failure or not.

A. We developed a condition right after—

Q. By Mr. Jamieson: Did you see it in operation afterwards?

A. We developed a condition after we had installed it that made the whistle work.

Q. What was that condition? [217]

A. We lowered the water in the boiler.

Q. When the whistle worked, did the fuel shut off at the same time?

A. It was supposed to shut off at the same time.

Q. Do you know whether it did or didn't?

A. I don't know now; no.

Q. Do you know whether the company ever had another one installed like that? A. I don't know.

Q. Do you know whether they abandoned it?

A. I don't know.

Q. Did you ever see it operate other than the time you lowered the water? A. Oh, yes.

Q. Did you ever see it operate, I mean?

A. Oh, yes; it was on the boilers.

Q. Did you ever hear the whistle blow after that?

A. No.

Mr. Jamieson: All right, that is all.

Redirect Examination

Q. By Mr. Fulwider: Was it purchased by the Continental Oil Company, the installation?

A. I wouldn't know that or not.

Mr. Fulwider: I think that is all. Mr. Thornton. [218]

C. A. THORNTON

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Court: How about introducing the prior art? Have you got it in your book?

Mr. Fulwider: Yes; I have. I was going to introduce it but I wanted to discuss it.

The Court: Introduce it and then I will set a time for the argument, when it can be disposed of. You can put them in as a part of the record.

Direct Examination

The Clerk: What is your name, please?

A. C. A. Thornton.

The Clerk: And what is your full first name?

A. Cecil.

Q. By Mr. Fulwider: What is your address, Mr. Thornton? A. 382 Morrell Park.

Q. By whom are you employed now?

A. The Continental Oil Company.

Q. When did you start to work for the Continental Oil Company? A. In 1931.

Q. Did you ever work at a lease of the Continental at Seal Beach? [219] A. Yes.

Q. Commencing when?

A. The first week in January in 1932.

Q. And are you still there at Seal Beach?

A. I am still there at Seal Beach.

Q. What were your duties, in 1932, at Seal Beach?

A. In 1932, I was a roustabout, working for Mr. Brown.

Q. Mr. Brown who has just testified?

A. Yes, sir.

(Testimony of C. A. Thornton)

Q. Do you recall whether or not a Pinkerton alarm and fuel valve shut-off was ever installed at the Continental lease at Seal Beach?

A. Well, I believe this same alarm system is the same one that we installed in, I think it must have been, after July. I was down there about six months working for Mr. Brown.

Mr. Jamieson: Could I ask, if there are any other witnesses that are going to testify to this, that they be excluded?

The Court: Oh, no.

A. And that is the system that we worked on there or installed there. It was some time between July in 1932 and the earthquake. I don't remember just the exact date but it was in there somewhere.

Q. By Mr. Fulwider: By the "earthquake," do you mean [220] the earthquake in 1933?

A. March 10, 1933.

Q. How do you fix that July date?

A. We had a boiler explosion there; also, I had been down there about six months on that lease.

Q. Who was superintendent of the Seal Beach lease when you were there in 1932 and '3?

A. Van Slack.

Q. Do you remember his first name?

A. All we ever called him was Van. That is all I remember.

Q. Can you tell me approximately when he died?

A. February 25, 1933, just before the earthquake.

Q. Can you describe for me the Pinkerton apparatus that was installed during that period between July, 1932

(Testimony of C. A. Thornton)

and March 10, 1933? Describe it to me in your own words, to the best of your recollection.

A. I never went into it or anything like that. We installed hundreds of things down there, or wanted everything that came along. But this is not our business and a lot of them don't want you to peer into their things. Any time we have a pump or something like that, it goes back to the shop when something is wrong, or the Pinkerton water regulator—we call up Mr. Pinkerton and that is fixed and goes into the shop. But I remember installing it there and the operation [221] of it; that your float valve on the side—

Q. On the side of the boiler?

A. Yes; and your water connection we drilled in the side down here for your float regulator here, and then your shut-off valve on your fire box and your whistle valve, and then there was a little steam heater line and your two valves to bleed your lines, and then I believe there was a globe gate down on the bottom on that one.

Q. What was that for?

A. To close off. I believe we put that on there to close off there the gas and steam there.

Q. What happened when the water in the boiler became low, too low?

A. Well, your float valve and your needle valve in there will not let steam pressure come in and, of course, your bottom regulator would close off the pressure on that type of valve, and the other one was reversed and would open it and the whistle at the same time.

(Testimony of C. A. Thornton)

Q. The bottom regulator you mentioned—was that the fuel valve?

A. That is the fuel valve going into your fire box and your top valve is your whistle valve. When the water level went down in your boiler, then that opened that jet and put that pressure in there.

Q. Do you have any independent recollection as to [222] whether or not the apparatus that you installed there at Seal Beach—or in that apparatus the fuel valve was similar to this Exhibit E here in front of you?

A. I wouldn't know by looking at the valve. As I say, I never tore into them. All I know is the way it operated and these look similar to me, as I remember. That has been quite a while ago.

Q. Did you ever have occasion to go into the piston assembly that operated the fuel valve, to see what that piston was like or how it was operated?

A. No; I didn't.

Q. You didn't take it apart?

A. No. That wouldn't be anything for me to do.

Q. How long, to your knowledge, was that Pinkerton installation at Seal Beach continued in operation?

A. It was in operation until we changed over and built the new plant some time in probably 1935 or 1936, somewhere in there.

Q. Did you ever test the installation to see if it functioned properly? A. I didn't test it.

Q. Did you ever hear or see it tested by others?

A. Yes; Mr. Brown did.

Mr. Jamieson: That is objected to as hearsay unless you saw him. [223]

(Testimony of C. A. Thornton)

Q. By Mr. Fulwider: Did you see him test it?

A. Yes. I was working right with him all the time.

Q. You were his assistant, were you not?

A. There were about four or five of us in the crew.

Mr. Fulwider: I think that is all.

Cross-Examination

Q. By Mr. Jamieson: You were working for Mr. Brown, at the time, as his assistant?

A. That is right.

Q. And you just did what he told you to do?

A. That is right.

Q. You did no more about the job than he did, did you?

A. Well, that could be possible, too, at times. I don't say I did in this case but in some cases. It was new to him and new to me.

Q. It was new to you and new to him?

A. Yes.

Q. Do you remember the testing of the valve?

A. Yes; I recollect that, I believe, where we blew off the boiler and lowered down there to try it out. We usually do that.

Q. Did you hear the whistle blow? A. Yes.

Q. And you saw the fuel shut-off valve work, did you? A. I don't remember right now. [224]

Q. Do you know whether it worked or not?

A. It must have worked all right.

Q. Do you remember seeing it work?

A. I don't remember looking in and seeing it shut off.

Q. You don't know whether the fires were shut off by it? A. No.

(Testimony of C. A. Thornton)

Q. Do you know whether they were shut off simultaneously or in any other way?

A. I don't know whether they closed it off manually or what, or afterwards, or what.

Q. Do you know what means was in that mechanism to cause the whistle to blow?

A. Do you mean in your float valve on the side?

Q. Do you know whether the train of mechanism—

A. I imagine—

Q. Do you know?

A. —if your water level went down, your steam pressure worked the valves.

Q. Do you know what the valves looked like? Did you see them at that time?

A. Yes; I seen the valves, this installation.

Q. Did you install the valves at Seal Beach?

A. Yes.

Q. What did they look like? Can you describe it with- [225] out referring to any exhibit?

A. They looked something like this valve.

Q. Which one? A. Here; the shut-off valve.

Mr. Fulwider: Exhibit E.

A. And we had a float like there and a chamber.

Mr. Fulwider: Exhibit F.

Q. By Mr. Jamieson: Do you know whether it had a non-return means in it, connected to the chamber?

A. A return from this valve back to the chamber?

Q. Yes.

A. It only had two valves up on top and then that copper tubing down to it.

Q. It didn't have any manual release on that chamber, did it? A. Yes.

(Testimony of C. A. Thornton)

Q. Where? A. On the top.

Q. On the top of the chamber?

A. I believe we had a globe valve here and then I believe there was a pulley or something on that.

Mr. Fulwider: By "here," describe it in words. That is Exhibit E you just pointed to.

Q. By Mr. Jamieson: Do you know what the valves looked like? [226]

A. Well, as far as I can remember, this looks like the bottom shut-off valve, your gas valve.

Q. I was referring to the valves that actuated the whistle. Do you know what they looked like?

A. Well, as I remember, it is a valve something like this, with just a whistle on it.

Q. What did the valve that operated the whistle look like?

A. As far as I remember, it looked something like this valve right here. I don't see—

Q. You say it looks like Exhibit E. Will Exhibit E blow a whistle?

A. No; that won't blow a whistle but I say it was a valve something like that, with a whistle attachment to it, that operated probably reverse to that.

Q. Do you know whether the valve had a valve stem on it? A. Well, I don't remember.

Q. Do you remember whether there were any slots in the valve stem?

A. No; I don't remember how it was made that way.

Q. Do you know whether it had one or two valves?

A. No; I don't know.

Q. When you changed the plant, did they throw away this installation? [227]

(Testimony of C. A. Thornton)

A. I don't know. I wasn't working there at that time.

Q. When was the next time that you saw a Pinkerton valve. A. The next time from what?

Q. From that installation?

A. Do you mean in July?

Q. Yes; when you saw another one.

A. I believe they had one over there on the Standard lease.

Q. When?

A. I think it was about 1934 or 1935. I heard the whistle blowing.

Q. But there was no fuel shut-off on the Standard lease, was there? A. I don't know.

Q. When was the next time you saw a fuel shut-off Pinkerton valve?

A. I haven't seen any, only the one we had right there.

Q. You never saw one after that? A. No.

Q. And your company never installed any more after that?

A. I don't know. They might have installed hundreds [228] of them.

Q. You didn't see any? A. No.

Mr. Jamieson: That is all.

Redirect Examination

Q. By Mr. Fulwider: Mr. Jamieson asked about the release valve and the witness pointed to this top here. There was this bleed valve, was there? A. Yes.

Mr. Fulwider: That is all. We will call Mr. Dollarhide.

RUSSELL A. DOLLARHIDE

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

A. Russell A. Dollarhide.

The Court: We have worked pretty long hours. Unless you want to get rid of this witness, I would just as soon continue this matter because we can't conclude tonight.

Mr. Fulwider: This happens to be his day off.

The Court: All right. Let's finish.

The Clerk: What is your name?

A. Russell A. Dollarhide.

Direct Examination

Q. By Mr. Fulwider: Mr. Dollarhide, by whom are you employed now? [229]

A. The Continental Oil Company.

Q. When did you go to work for the Continental Oil Company? A. The 25th of August in 1926.

Q. Did you ever work at the Seal Beach lease?

A. Yes, sir.

Q. During what years?

A. I have been there ever since and am still there.

Q. Since 1926? A. Yes, sir.

Q. Can you tell me whether or not a Pinkerton low water alarm and fuel shut-off system was ever installed at the Continental lease at Seal Beach?

A. Yes, sir; it was.

Q. Can you tell me when it was installed?

A. Well, some time between July in 1932 and the 25th of February, 1933.

(Testimony of Russell A. Dollarhide)

Q. How do you fix those dates?

A. Well, a boiler blew up along about the 1st of July in 1932 and our superintendent Van Slack died the 25th of February, 1933.

Q. And you fix the date of the Pinkerton installation as being some time between those two dates?

A. Van Slack was superintendent at the time it was installed. [230]

Q. Can you tell me what that Pinkerton alarm system—or, first, what were your duties at the lease at that time when the alarm system was installed?

A. I was the dehydrator operator.

Q. Was it the boiler of the dehydrating plant upon which the Pinkerton system was placed?

A. Yes, sir.

Q. When you were operating it? A. Yes, sir.

Q. Can you tell us briefly how that Pinkerton installation worked or what it comprised and what it did?

A. Well, it was comprised of a float valve and a fuel valve and a whistle valve.

Q. Where was the float located?

A. Up near the side of the boiler.

Q. Was it in a separate float chamber?

A. Yes, sir.

Q. Was the float chamber connected to the water and the system—

Mr. Jamieson: I object to that as leading and suggestive.

Q. By Mr. Fulwider: How was it connected?

A. It was connected with an inch line from the top of the boiler, of the float valve, and an inch line from the top of the boiler to the top—[231]

(Testimony of Russell A. Dollarhide)

Q. What lines led from the fuel valve housing?

A. There was copper tubing led up to the manifold, across the top of the boiler to the whistle valve and another tubing ran to the top of the fuel valve.

Q. What happened when the water got low and the float went down a certain amount?

A. The whistle would blow and the fuel valve would shut off.

Q. Do you know whether or not the fuel valve was piston-operated, that is, did it have a piston connected with the valve stem?

Mr. Jamieson: That is objected to as leading and suggestive.

The Court: No.

Mr. Jamieson: Can't he tell what he remembers of it?

Q. By Mr. Fulwider: Tell us how the fuel valve was operated.

A. It operated from a piston, from the top of the body of the valve.

Q. And the top of the piston—was that connected to the steam line you mentioned? A. Yes, sir.

Q. Did you ever look inside of the float valve assembly to see what the valves were like?

A. No; I didn't. If anything got wrong, we just called [232] Pinkerton.

Q. You are acquainted with Mr. Brown and Mr. Thornton? A. Yes, sir.

Mr. Fulwider: That is all.

(Testimony of Russell A. Dollarhide)

Cross-Examination

Q. By Mr. Jamieson: Mr. Dollarhide, are you connected with Mr. Pinkerton in any way?

A. No, sir.

Q. You are still working for the Continental?

A. Yes, sir.

Q. What were you doing at the time of this installation?

A. I was a dehydrator operator, operating the dehydrating plant and also caring for the boiler plant.

Q. Did you have anything to do with this Pinkerton equipment? A. Yes, sir.

Q. Were you there when it was installed on this—do you know what the parts were?

A. No more than after they were installed.

Q. Were you there all the time they were being installed? A. Yes, sir.

Q. Can you tell us in your own words what you saw?

A. Brown was pusher of the roustabout gang and the [233] pipefitting gang and they had him install the valves and the whistle.

Q. Were you there all the time they were installing them? A. Yes, sir.

Q. What were the parts you saw?

A. The fuel valve.

Q. What did the fuel valve look like?

A. It resembled this valve.

(Testimony of Russell A. Dollarhide)

Q. Without looking at this, according to your own memory, what do you remember?

A. It had a casting at the bottom and was connected with a brass cylinder on the top, with a stem down through the center.

Q. What was inside of the brass—

A. I wouldn't know.

Q. What did the stem down the center look like?

A. There is parts you could see. It was just brass— or just a rod.

Q. Did you see what the inside looked like?

A. No; I did not.

Q. Did you see what the valve looked like that operated the shut-off valve?

A. Just the regular valve like what was described.

Q. Can you describe it? [234]

A. It had a brass cylinder on top and a casting and the stem down through and I think it was operated from a piston.

Q. Was there a leather cup? A. No.

Q. Was there more than one valve in it to operate it?

A. I wouldn't know.

Q. Do you know whether there were any stems on the valves?

Mr. Fulwider: Which valves?

(Testimony of Russell A. Dollarhide)

Mr. Jamieson: That operated the whistle and the shut-off valve. A. I wouldn't know.

Q. Do you know whether there were any slots in the valve? A. I would not know that, either.

Q. Do you know whether there was any manual release?

A. There was a manual release just on top of the fuel valve and also up near the float valve.

Q. Do you know whether there was any shut-off means to prevent the pressure in the valve returning to the place from which it came?

A. Steam pressure?

Q. Yes. A. I don't remember. [235]

Q. Do you know where the steam pressure came from?

A. It came from the top of the boiler.

Q. How did it get from the top of the boiler?

A. It came from an inch line.

Q. A straight inch line?

A. It had an "L" in it.

Q. There was a line from the top of the boiler to the top of the valve, is that right?

A. It consisted of an inch line and a needle and "L" and down into the float valve.

(Testimony of Russell A. Dollarhide)

Q. In other words, there was a straight line connection from the top of the boiler to the top of the fuel shut-off valve? I mean there was nothing in the line?

A. Not that I know of.

Q. Was there any thermostat on it?

A. I wouldn't know.

Q. Did you see the inside of any of the mechanism?

A. No.

Mr. Jamieson: That is all.

Redirect Examination

Q. By Mr. Fulwider: How long did that installation operate at Seal Beach, if you know?

A. Until the plant was torn down.

Q. How long was that?

A. I would say until 1935. [236]

Mr. Fulwider: That is all.

Recross-Examination

Q. By Mr. Jamieson: When was the next time you saw a Pinkerton shut-off valve? A. I wouldn't know.

Q. In 1939?

A. I don't know.

Q. In 1940?

A. I wouldn't remember.

Q. Did you ever see one?

A. I don't know as I have in operation. I don't get out around the plant.

Mr. Fulwider: That is all. The rest of our case is just the art and Mr. Pinkerton we would like to put on, not tonight, who will correlate all of this corroborating testimony that has come in today.

The Court: All right.

Mr. Fulwider: Shall I at this time offer the book of patents?

The Court: Yes.

Mr. Fulwider: I would like to offer the book of patents as the defendant's next exhibit.

The Court: Are these the ones that are pleaded?

Mr. Fulwider: That is right, plus a few additional prior art patents which we found afterwards and which Mr. Jamieson [237] is advised of and which are in there to show the state of the art and not as anticipation.

The Court: It may be admitted.

The Clerk: Defendant's Exhibit I in evidence.

The Court: What is your best reference out of all of those?

Mr. Fulwider: It is two patents in suit. The best reference is the patent that ends with -925 or -395 is the patent to Parker. That will be the first one in the book. And the best reference—or it is our position that that alone is a complete anticipation. And then I will call your Honor's attention particularly to the Sutherland patent, which shows a fuel valve almost identical with the one Pinkerton was using.

Mr. Fulwider: Yes; it is pleaded.

The Court: Sutherland is not pleaded?

The Court: No; I don't see it.

Mr. Jamieson: Is Parker pleaded?

Mr. Fulwider: Yes. There are three for the fuel valve, Sutherland and Horridge.

They are in order. And then as to the valve patent, your Honor, our best reference is the patent to Baldwin, as to the complete valve assembly; and, also, the patent to Wright, which is equally good. We really have two best references. [238]

The Court: All right.

Mr. Fulwider: I want to put the file wrappers in because I particularly wish to discuss them in the argument.

The Court: All right.

Mr. Fulwider: We will put the one for the -395 patent in first; next, the file wrapper on -2233—

The Clerk: Defendant's Exhibit J in evidence.

Mr. Fulwider: And this is on the valve patent.

The Clerk: Defendant's Exhibit K in evidence.

[Endorsed]: Filed Jul. 13, 1948. Edmund L. Smith, Clerk. [239]

[Title of District Court and Cause]

Honorable Leon R. Yankwich, Judge Presiding
 REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California, Monday, April 5, 1948

Appearances:

For the Plaintiff: Hamer H. Jamieson, Esq., Security Building, Los Angeles, California.

For the Defendant: Robert W. Fulwider, Esq., 5225 Wilshire Blvd., Los Angeles, California. [243]

* * * * *

KENNETH FAY,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, sir?

The Witness: Kenneth Fay.

Direct Examination

By Mr. Fulwider:

Q. Are you acquainted with Mr. Pinkerton, the defendant in this case? A. Yes, I am.

Q. Can you tell us approximately when and under what circumstances you became acquainted with Mr. Pinkerton? [244]

A. I believe it was around May of 1944. Mr. Pinkerton came in to see me at my company. I was associated with Crane Company at the time as an industrial engineer, and he submitted a sketch of a fabricated assembly that he wanted to see if I could make for him

(Testimony of Kenneth Fay)

with our facilities at the shop, and after considering it we made three samples from that sketch, and later we went into further production, and for our records, naturally, I made a drawing of the proposed assembly myself.

The Court: Did you say it was '34 or '44?

The Witness: '44.

Mr. Fulwider: Will you mark this for identification, please?

The Clerk: Defendants' Exhibit L, for identification.

(The diagram referred to was marked Defendants' Exhibit L, for identification.)

Q. By Mr. Fulwider: I show you here a blueprint, Mr. Fay, Exhibit L; can you tell me what that blueprint shows and who it was made by?

A. Well, it shows my sketch of the fabrication as submitted by Mr. Pinkerton.

Q. I notice it carries the name "K. Fay"; is that your printing? A. That's right.

Q. It is drawing No. C 166, dated 6-7-44? [245]

A. That's right.

Q. Is that likewise your printing? A. Yes.

Q. Is that the drawing you mentioned as having been made for Mr. Pinkerton about that date?

A. That's right.

Mr. Fulwider: Will you mark this group here together as the next exhibit?

(Testimony of Kenneth Fay)

The Clerk: Defendants' Exhibit M, for identification.

(Group of papers referred to was marked Defendants' Exhibit M, for identification.)

Q. By Mr. Fulwider: I show you here a group of sales slips, some of them delivery slips, perhaps—maybe you can tell me what they are—that have “Crane Company” printed at the top. Can you tell me what those are, the ones that have “Crane Company” and what the items there represent?

A. Well, this quantity here of three four-inch extra heavy seamless pipe water alarms, as per sketch, this is the cash receipt, this was drawn up by the cashier.

Q. That is dated 5-12-44?

A. That's right. I think this was one of the first ones we made.

Q. That is what you call a cash receipt slip, is that it?

A. That's right, sir. It is marked “Paid” by Bill Donis. The others are all the same, only the quantities [246] vary. Some of them are six, some of them a quantity of 10. Here is a quantity of seven.

Q. I call your attention particularly to this cash sale sheet, No. 6001, which says “Per Crane drawing C 166”; would that be this drawing or some other?

A. That is right, the same drawing. We have to mark all our sketches with a specification number.

Q. Did you have anything to do with the supervision or fabrication, or the delivery of these parts to Mr. Pinkerton?

(Testimony of Kenneth Fay)

A. Yes. Any orders that I handled, why, I made the sketches and supervised the fabrication, and also arranged for the delivery.

Q. Were the parts that Crane made for Mr. Pinkerton made in accordance with this drawing?

A. Right from this drawing.

Q. That is a shop drawing, is it?

A. That's right.

Q. Do you recall independently about how long your company was making parts—what shall we call these, bodies? A. Yes.

Q. (Continuing)—for Mr. Pinkerton in accordance with this, or do you have any such recollection?

A. It must have been for a year, at least, over a year; I can't remember exactly.

Q. Are you still with the Crane Company? [247]

A. No; I am with another company.

Q. When did you leave the Crane Company?

A. 1945, in September.

Mr. Fulwider: Thank you. You may cross examine.

Mr. Jamieson: ' No cross examination.

The Court: All right.

Mr. Fulwider: You may step down. Thank you, Mr. Fay.

(Witness excused.)

Mr. Fulwider: I would like to call Mr. Correze.

I may say this testimony goes to the plug type valve assembly that was made for a short time during the war. We want to establish when that form was started and approximately when it was finished.

STANLEY L. CORREZE,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Stanley L. Correze.

Direct Examination

By Mr. Fulwider:

Q. Mr. Correze, have you ever been employed by Mr. Pinkerton? A. Yes, I have.

Q. Can you tell me approximately when you started in [248] his employ? A. The middle of 1936.

Q. How long did you stay with him in his employ?

A. Until the first part of 1944.

Q. 1944? A. '42. Pardon me.

Q. What were your duties while you were with Mr. Pinkerton? A. Machinist in charge of the shop.

Q. I call your attention to these two exhibits, E and F, here on the floor before you; have you ever seen any devices similar to those? A. Which is "E"?

Q. "E" is the valve and "F" is the alarm body.

A. Yes, I have.

Q. Will you tell me whether or not Mr. Pinkerton had any of those in his shop when you came to work for him in 1936? A. Yes, he did.

Q. Can you tell me about how many, or do you have a recollection on that?

A. Well, I would say approximately 50 of the cast iron casting there, the low water alarm.

Q. The alarm bodies?

A. Yes, the bodies. [249]

(Testimony of Stanley L. Correze)

Q. That is Exhibit F. This one here?

A. Yes.

Q. That is Exhibit F.

A. I would say about the same of the other, the fuel shutoff valve.

Q. The valve, Exhibit E. A. Exhibit E.

Q. Were they assembled or disassembled?

A. Assembled.

Q. Were any of those castings or parts, Exhibits E or F, manufactured by Mr. Pinkerton in his shop while you were in his employ? When I say "manufactured" I mean were any of them made in addition to the inventory he had on hand then. A. Yes; a few.

Q. Do you recall whether or not the valves, Exhibit E, were delivered with a relief cock or fitting either attached or loose for attachment when they were sent out of the shop? A. No.

Q. Do you remember whether or not there was a fitting similar to this small one here that had a bleed in it, a small bleed hole that screwed into the top of the valve?

Mr. Jamieson: That is objected to as indefinite and not referring to any particular device.

Mr. Fulwider: There is a fitting here (indicating). [250]

Mr. Jamieson: I am not referring to that; I am referring to the ones you are asking about in your question.

Q. By Mr. Fulwider: There is a small fitting there which has a bleed hole; do you recall whether or not any of those early valve assemblies that were sold while you were working for Mr. Pinkerton went out with fittings like that? A. No, I don't.

(Testimony of Stanley L. Correze)

Q. You don't remember? A. No.

Q. Will you take a good look at this valve while you have got it here, and tell me whether or not you are positive, if you are, that that is one of the valves that was made or identical with the valve that was made while you were in Mr. Pinkerton's employ?

A. Yes, it is.

Q. Will you step down for a minute, please, and take a good look at this alarm body, Exhibit F, and tell me whether or not that is identical, or if not how different from alarm bodies and floats that were manufactured and were on hand when you were with Mr. Pinkerton?

A. It is identical.

Q. Now, I will call your attention—you can resume your seat now—to a plug, Plaintiff's Exhibit 12; were any of these plugs—I will put it this way: Did you ever see a plug fitting similar to that prior to leaving Mr. [251] Pinkerton's employ in 1942?

A. No, I didn't.

Q. To your knowledge was such a plug ever manufactured in Mr. Pinkerton's shop prior to your leaving in 1942? A. No.

Q. If such a plug had been made would you have known about it? A. Absolutely.

Q. Did Mr. Pinkerton have any other shops during that time? A. No.

Q. After leaving Mr. Pinkerton in 1942 did you ever work for him again? A. Yes, again in 1944.

Q. Can you tell me approximately what date, when you started?

A. Approximately August or September I started, and continued to the following April, I believe, or May.

(Testimony of Stanley L. Correze)

Q. When you came back to work for Mr. Pinkerton in 1944 what type of alarm body valve mechanism was he then manufacturing?

A. This type here (indicating).

Q. That is this plug, Exhibit 12? A. Yes.

Q. I show you this drawing, blueprint, Exhibit L; have [252] you ever seen that print or one identical with it before? A. Yes, I have.

Q. Can you tell me what it portrays?

A. It is the fabrication, welded fabrication of an alarm body.

Q. Does that have any relationship to this plug, Exhibit 12? A. It does.

Q. Can you tell me what it is.

A. It screws into the side flange.

Q. That is, the plug screws into the side flange?

A. Yes, which is the operating mechanism in conjunction with a float which operates the low water alarm and fuel cutoff valve.

Q. Do you know whether or not this alarm body shown by Exhibit L was the alarm body sold by Mr. Pinkerton for awhile with these plug assemblies, in them?

A. Will you please repeat that?

Mr. Fulwider: Read the question.

(The question was read by the reporter.)

The Witness: That's right.

Q. By Mr. Fulwider: That was after your return to his employ in 1944? A. That is correct.

Mr. Fulwider: That is all. [253]

The Court: Cross examine.

Mr. Fulwider; Pardon me, please.

(Testimony of Stanley L. Correze)

Q. By Mr. Fulwider: Mr. Correze, did you have any contact with the working drawings and assembly drawings which Mr. Pinkerton had in his shop at the time you came to work for him, relative to these low pressure alarm bodies and valve assemblies?

A. Well, I saw the drawings, but I had nothing to do with the making of them.

Q. I would like to show you these drawings and see if they are familiar to you. Here is a drawing, Exhibit F-3, it is dated 12-14-34. Can you tell me whether or not you have ever seen that before?

A. Yes, I have seen this drawing.

Q. When and where?

A. Well, that was during the period of time I worked for Mr. Pinkerton between 1936 and '42.

Q. Do you remember whether or not it was there when you went to work for him?

A. Well, I suppose it was, because I saw it, and I don't remember him bringing it there. I had nothing to do with making the drawing.

Q. I understand that.

A. The drawing is familiar to me.

Q. Did you ever make any drawings for Mr. Pinkerton? [254]

A. Yes, I have.

Q. Did you make many or few drawings while you were there?

A. I made quite a few.

Q. Did he have anyone else make drawings, as far as you know, while you were in his employ?

A. Yes.

Q. He did have some?

A. Yes.

Q. I show you another drawing here, Exhibit E-2; can you tell us whether or not that is familiar to you?

A. It is.

(Testimony of Stanley L. Correze)

Q. Can you say whether or not you saw it soon after your employment?

A. Yes, I did, I remember seeing this. This was the manufactured part I was speaking of.

Q. And those drawings were kept in the Pinkerton shop, were they? A. Yes.

Q. Here is an assembly drawing or schematic installation drawing, rather, Exhibit H; have you ever seen that before? A. I have.

Q. Under what circumstances and about when?

A. This drawing I saw very soon after I went to work [255] for him, because I believe this is one that was used in part of his literature of installation of the low water alarm and fuel cutoff valve.

Q. I believe you examined these photos just before court convened. Will you tell me to the best of your knowledge as a mechanic who worked for Mr. Pinkerton for some six years what this construction is on the alarm body, or what it appears to be to you? And if you wish any aid I have a glass here.

A. You mean this added?

Q. Yes. Tell us from what you can see from the photo what that bracket is and describe that assembly.

A. From what I can see, somebody other than myself or anybody connected with the Pinkerton—

Mr. Jamieson: We move to strike that as a conclusion.

The Court: Strike that out. He is asking you what that is.

The Witness: It is a flange added to the existing flange of the Pinkerton low water alarm.

(Testimony of Stanley L. Correze)

Mr. Jamieson: We move to strike that as a conclusion of the witness.

The Court: No. That is a description.

Mr. Jamieson: He says a flange added to the Pinkerton construction.

The Court: You may cross examine him about it later. [256] He has testified that he knows the construction, and this is an addition to it.

Mr. Jamieson: I will withdraw the objection. I will cross examine him about it.

The Court: Go ahead.

Q. By Mr. Fulwider: In your opinion, with your experience with regard to these valves, do you now think that was made?

Mr. Jamieson: We object to it. No foundation laid.

Mr. Fulwider: I think he is an expert as far as this thing goes. He worked with Mr. Pinkerton for six years. Nobody knew the alarms any better than he.

The Court: I do not think he can express his opinion on it. He can express his knowledge if he saw it made.

Mr. Fulwider: It is a little hard to tell from those photographs, and he has looked at them, and I would like to have him state what the photograph shows to him.

The Court: That is all right.

Q. By Mr. Fulwider: Will you tell what the photograph shows to you as to the construction of that bracket and the two plugs on the sides?

A. Well, as to the construction, the original flange that is on the side of the low water alarm has been machined off for some reason, and a new flange made and bolted on, that is, with studs, that has some type of [257] bleed on the side and a whistle and a fuel valve

(Testimony of Stanley L. Correze)

connection. I can't understand why anybody would go to such an amount of trouble to make such a connection.

Mr. Jamieson: I move to strike that as a conclusion, speculation of the witness.

The Court: It is a description. He is a mechanic. He is describing a device.

Mr. Jamieson: All right.

Q. By Mr. Fulwider: Did you ever, during your employment with Mr. Pinkerton, put out a structure like that in the photograph? A. No, sir.

Q. Did you ever see a structure like that in the photograph? A. No, sir.

Q. Did you ever see a Pinkerton structure that had two small, what seemed to be ports, radial ports, out to the side, which appear to be plugged or have bleeds in them? A. No, sir.

Mr. Fulwider: That is all. Cross examine.

Cross-Examination

By Mr. Jamieson: ,

Q. Mr. Correze, where are you working now?

A. Page Oil Tool, Incorporated.

Q. What are you doing for them? [258]

A. Machinist.

Q. When you were working for Mr. Pinkerton were you familiar with all of the structures that he made during the two periods that you have mentioned?

A. Yes.

Q. I show you a photograph that has been marked Plaintiff's Exhibit 13-B and ask you to look at that and tell me whether that shows a Pinkerton construction as

(Testimony of Stanley L. Correze)

you knew it, using any magnifying glass or anything you wish to.

A. This is partially a Pinkerton construction, but I don't recognize the connection of the whistle and fuel valve.

Q. You would say that it looks like a Pinkerton construction in general, though? A. Yes.

Q. Now, I show you another photograph that is marked Plaintiff's Exhibit 13, and ask you if you can identify that a Pinkerton construction.

A. Yes, it is.

Q. What is it? A. It is a fuel cutoff valve.

Q. Do you know when Pinkerton started making that construction? A. Yes.

Q. When? [259]

A. Approximately the first part of 19— that is, the last part of 1938. That is as close as I can recollect.

Q. Does that look like the first job that he put out?

A. I couldn't say whether that was the first one, or not. They all looked alike.

Q. You don't remember seeing any of them before the latter part of 1938, is that it? A. No.

Q. Do you know where that installation was made? Can you recognize it from the photographs?

A. No.

Q. Do you know about an installation that was made in the Athens field in 1939, about August? A. No.

(Testimony of Stanley L. Correze)

Q. If I told you that that is a picture of the installation that was made in the Athens field in 1939, would it help you refresh your memory of that and identify it better?

A. No. This shows the front end of a boiler and there are thousands of boilers all over the State.

Q. I am referring to the fuel shutoff valve.

A. That doesn't mean anything to me.

Q. Well, then, I will show you these other pictures that are marked 13 and 13-A; does that mean anything to you with regard to the date of 1939 and the Athens field? A. No. [260]

Q. Do you remember when Pinkerton made the first installation of the structure shown in those drawings? I mean not made in the shop, but sold it and delivered it.

A. I definitely don't remember, no.

Q. Did it make any impression on you when he made his first delivery, to whom he made it? A. No.

Q. You don't know to whom he made it?

A. No.

Q. You didn't know what the internal construction of these devices was, did you? A. Of these?

Q. Yes. A. I did, yes.

Q. Did you know how the whole assembly worked?

A. I made all the drawings.

Q. Did they have one or two or three or four valves in them for operating the mechanism?

A. Two valves.

(Testimony of Stanley L. Correze)

Q. And that was the first device that had two valves, wasn't it, that Pinkerton made? Prior to that they had only one valve, didn't they?

A. Of this type of construction? The old type of construction had one valve.

Q. And in 1938 was the first time they made the two [261] valves, is that right?

A. As far as I can remember.

Q. After they made the two-valve construction in 1938 did they ever return to the old one-valve construction, as far as you know?

A. That is, after making—Repeat that again, please.

Mr. Jamieson: Repeat the question, please.

(The question was read by the reporter.)

The Witness: Yes.

Q. By Mr. Jamieson: When?

A. Several times during the period of the time I worked for him a customer would order a low water alarm and not include a fuel valve cutoff. In that case there was no need of having a two-valve assembly.

Q. But the first time they made a two-valve assembly that had a fuel cutoff was in 1938, as far as you know, is that right?

A. The old type there—

Q. Answer the question, then make any explanation you want.

Mr. Jamieson: Read the question again, please.

(The following question was read by the reporter: "But the first time they made a two-valve assembly that had a fuel cutoff was in 1938, as far as you know, is that right?") [262]

The Witness. Yes.

(Testimony of Stanley L. Correze)

Q. By Mr. Jamieson: And you started working for them in 1936? A. Yes.

Q. Did you have access to the whole plant? You had the run of their entire shop? A. Yes.

Q. All the time you were there? A. Yes.

Q. You knew everything they were making?

A. Well, yes.

Q. Did you have any conversation with Mr. Pinkerton at the time that they first started making this two-valve fuel shutoff construction when you first made the drawings for it?

A. Did I have any conversation with him?

Q. Did you make the first drawings? A. Yes.

Q. When did you make them?

A. I can't give you any definite date.

Q. Some time in 1938?

A. Yes, or prior to that time.

Q. Early or late? A. I would say early.

Q. Do you remember where you made those drawings? [263] A. Yes.

Q. Where? A. 109 East Wardlow.

Q. Who else was there besides yourself at the time that you made them?

A. I believe I was the only employee.

Q. You didn't make them without any instructions from Mr. Pinkerton, did you? A. No.

Q. Do you remember the occasion of his giving you the instructions to make them? A. No.

Q. Do you remember that he gave them to you?

A. Yes.

Q. What did he say when he gave them to you?

A. I don't remember.

(Testimony of Stanley L. Correze)

Q. How did you make it, then?

A. How did I make the drawing?

Q. Yes, how did you make the drawing?

A. Pencil and paper and rule and T-square.

Q. You had to make them work; where did you get the idea?

A. The idea was originated from Mr. Pinkerton and myself.

Q. And you? Did you help originate it? [264]

A. All I did was coordinate his ideas—

Q. You misunderstand me. Did he give you a sketch or did he just explain orally to you how to make it, or did he show you another device?

A. He explained it orally to me how to make it.

Q. Did you ever see any Blanchard fuel shutoff valves? A. Yes, I have.

Q. When did you first see one?

A. I didn't know it as Blanchard. I believe it was the Inferno.

Q. When did you first see an Inferno job?

A. Approximately?

Q. Yes, just approximately.

A. In approximately 1940.

Q. Where did you see that?

A. It was on an installation I believe in the Rio Bravo oil fields.

Q. These devices that you made for the first time in 1938 were made from drawings which were drawn by you, is that right? A. Yes.

Q. And nobody else made any drawings of those for Mr. Pinkerton before that, as far as you know?

A. For this type? [265]

(Testimony of Stanley L. Correze)

Q. Yes. A. No.

Q. The two-valve type?

A. Well, not to my knowledge.

Q. How long did it take after you finished the drawings before a complete assembly was completed, if you remember, or approximately? A. Two months.

Q. So that you remember that the first device was completed some time in 1938, is that right.

A. Yes.

Q. Did that 1938 device resemble the structures shown in the photographs, Exhibits 13, 13-A, and 13-B, in any particular?

A. Exhibit 13 appears to be one of those constructions; 13-A appears to be, with the exception of the modification; and 13-B appears to be, with the exception of the modification.

Q. All right. Now, I show you a catalogue that has been marked Plaintiff's Exhibit 11, and ask you if that shows the Pinkerton structure as you knew it at the time you were employed by Mr. Pinkerton. A. Yes.

Q. And is the structure shown in Exhibit 11 exactly like that that you made the first drawings for in 1938? [266] A. 11?

Q. Yes, Exhibit 11. A. Yes.

Mr. Jamieson: That is all.

The Court: Any further questions?

Mr. Fulwider: I don't think we have any further questions, no.

The Court: All right. Step down. Call your next witness.

(Witness excused.)

Mr. Fulwider: Call Mr. Pinkerton.

The Clerk: You have not been sworn before, have you?

The Court: No, Mr. Pinkerton has not testified.

JACK LESTER PINKERTON,

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Jack Lester Pinkerton.

Direct Examination

By Mr. Fulwider:

Q. Mr. Pinkerton, will you tell us about when you first became connected with the oil industry?

A. About 1915.

Q. Where was that and in what capacity? [267]

A. In Ventura with the old State Consolidated Oil Company, which was later taken over by the Associated Oil Company in Ventura.

Q. Did you subsequently work for anyone else in Ventura? A. Yes; the Shell Oil Company.

Q. Approximately how long?

A. About seven years.

Q. What were your duties with the Shell Oil Company?

A. In them days it was a little bit of everything. I pumped, run the hydrating plants, worked cable tools, rotaries. That pretty well covers it.

Q. In those capacities did you have occasion to become familiar with and work with boilers?

A. Yes.

(Testimony of Jack Lester Pinkerton)

Q. When did you go to Long Beach?

A. 1924.

Q. For whom did you work then?

A. I worked three years for the Standard Oil at Santa Fe Springs.

Q. When did you start your own business?

A. Some time in 1927, the latter part.

Q. What were your first products?

A. What we called a thermostat control water regulator to control the level of water in boilers [268] thermostatically.

Q. Do you still manufacture those products?

A. Yes.

Q. When did you decide to add a line of boiler safety equipment to your business?

A. Along some time in the latter part of '31 or early '32.

Q. What types of boilers were being used generally in the oil business for drilling rigs and pumping leases at that time?

A. Pumping leases was usually, most of them, the water tube type. Drilling boilers was the locomotive or fire boiler type, as we called them in the oil fields.

Q. Were those high or what would be termed high, or low pressure? A. Low pressure.

Q. When you decided to build boiler safety equipment, what did you do?

A. Will you repeat the question, please?

Mr. Fulwider: Will you read the question, please?

(The question was read by the reporter.)

The Witness: Well, I fixed up some sketches. I had a neighbor by the name of Mr. Good, and between the

(Testimony of Jack Lester Pinkerton)

two of us—he was a carpenter and done some of his own drawing, and I used to get him over to my place at nights and I knew what I [269] wanted, and with his help we was able to sketch out what we wanted and had patterns made.

Q. By Mr. Fulwider: Did you have any castings made from those patterns? A. We did.

Q. Where did you take them, if anywhere, for machining?

A. We took them to the old Master Equipment Company.

Q. Where were they located?

A. I believe at that time on Firestone Boulevard.

Q. In Los Angeles? A. Yes.

Q. Who was the superintendent of Master Equipment at that time?

A. Do you mean of the shop, or general superintendent?

Q. Shop.

A. Mr. Harvill. We called him in them days Red Harvill.

Q. Is that the Mr. Harvill who has the Harvill Die Casting Corporation, the man who testified here the other day? A. Yes.

Q. What is his reputation, if you know it, in the industry? A. Tops.

Q. In what respects? [270]

A. An outstanding engineer in die casting, in particular aluminum. He is recognized in the United States in aluminum die casting.

(Testimony of Jack Lester Pinkerton)

Q. I call your attention to Exhibit E, and ask you if you will tell me what this is.

A. That is a low water fuel valve.

Q. Is that one of your products? A. It is.

Q. Can you tell me approximately when this particular individual valve was made, roughly?

A. I would say the latter part of '31 or early '32.

Q. I don't mean, necessarily, the valves of this type, but I mean this individual valve right here; do you know when this particular valve was made?

A. Not when that particular one was made, no.

Q. Can you tell me where it was made?

A. In was made in our shop in Long Beach.

Q. Is this one of what you called your low pressure system fuel shutoff valves? A. It is.

Q. How does this valve, Exhibit E, compare with those first valves that were made for you or machined for you, rather, at Master Equipment Company in '32?

A. The fuel valves, you mean?

Q. Yes. [271]

A. They were identically the same.

Q. Have you ever had any other than the one set of original patterns for the castings included within this Exhibit E?

A. Yes, later on we made different sizes.

Q. Were there any changes in design made?

A. No.

Mr. Fulwider: I will offer this in evidence, then. I think it was only marked for identification. It is E in evidence.

(Testimony of Jack Lester Pinkerton)

The Court: All right. E in evidence.

(The object referred to, heretofore marked Defendants' Exhibit E, for identification, was received in evidence.)

Q. By Mr. Fulwider: Why don't you come down here and save me carrying these up to you—

Mr. Jamieson: I understand that is offered to illustrate his testimony and not as having been produced at any particular time, is that right, Mr. Fulwider?

Mr. Fulwider: That is correct. This Exhibit E is identical—

Mr. Jamieson: Illustrative?

Mr. Fulwider: Identical and illustrative.

Mr. Jamieson: I mean for comparison. You fix no date as to when this particular one was made? [272]

Mr. Fulwider: That is right. It is offered as being identical with the ones that he has testified were made in early 1932.

The Court: All right.

Q. By Mr. Fulwider: Now, will you examine Exhibit F and tell me what that is, where it was made, and who made it?

A. Does this letter "F" cover all three of these parts?

Q. Yes, letter "F" covers both halves of the casting, plus the front and the valve mechanism inside.

A. Now, will you repeat the question?

(The question was read by the reporter as follows:

"Now, will you examine Exhibit F and tell me what that is where it was made, and who made it?")

The Witness: That is a low water alarm body. It was made in our shop. I would like to change that.

(Testimony of Jack Lester Pinkerton)

That was made at the Master Equipment Company. We had no shop at that time.

Q. By Mr. Fulwider: Can you tell whether or not this particular one sitting in front of us is one of the ones made at Master, or machined at Master, or machined in your shop subsequently?

A. It could be either.

Q. Will you examine that and tell me what differences, if any, there are between this Exhibit F in front of you, and [273] the alarm bodies which were machined for you by Master in early 1932?

A. There would be no difference.

Mr. Fulwider: I will offer Exhibit F in evidence, if your Honor please, for the same purpose as Exhibit E.

The Court: All right.

The Clerk: F in evidence.

(The object referred to, heretofore marked Defendants' Exhibit F, for identification, was received in evidence.)

Q. By Mr. Fulwider: Do you remember the name of any mechanic who worked on these items of yours at the Master Equipment Company?

A. Yes, one in particular, Mr. Robison.

Mr. Fulwider: I think it is just R-o-b-s-o-n.

Q. By Mr. Fulwider: After Mr. Harvell left Master, did you have any work subsequently done by him in his own shop?

A. Yes.

Q. To the best of your recollection when were the first alarm bodies, Exhibit F, and fuel valves, Exhibit

(Testimony of Jack Lester Pinkerton)

E, manufactured or completed for you by Master and assembled by you?

A. Will you read that question again, please?

(The question was read by the reporter.) [274]

A. I would say it was the latter part of '31 or early '32.

Q. Did you during the year 1932 ever call on a man by the name of Frank Van Slyke? A. Yes.

Q. Superintendent of Continental Oil Company at Seal Beach? A. Yes.

Q. What was the purpose of your visit?

A. It was to interest him in some of our low water alarms and fuel valves.

Q. What success did you have at first?

A. He wasn't much interested.

Q. Was there anything that subsequently happened that changed his interest? A. Yes.

Q. What? A. He had a boiler blow up.

Q. Approximately when was that?

A. I believe that was around the middle of 1932.

Q. During the latter part of '32 were you successful in selling some units to the Continental Oil Company?

A. We was.

Q. What did you sell to the Continental?

A. Low water alarm, fuel valve, and a steam whistle— [275] correction, steam whistle valve and steam whistle.

Mr. Jamieson: Pardon me. Will you read that?

(The answer was read by the reporter.)

Q. By Mr. Fulwider: Were the low water alarm and fuel valve being sold to Continental identical with Exhibits F and E, respectively, here? A. Yes.

(Testimony of Jack Lester Pinkerton)

Q. Calling your attention to drawing Exhibit F-3, can you tell me whether or not that is a reasonably fair representation of the type of installation that you made at Continental in—when was it, 1932?

A. The only difference would be is where the relief or bleed valve is located.

Q. Where is the relief valve in that drawing there?

A. Direct out from the alarm body.

Q. And that relief is connected to the steam line that goes down to the fuel valve, is it? A. Yes.

Q. What happened when the boiler water went down in a boiler, such as the one illustrated here, on which your equipment was installed?

A. As the water went down to a dangerous level in the boiler, what we would call the lower part of the glass, your float would drop and your needle valve and arm hook to the float, it would allow the needle valve to open, allowing [276] boiler pressure to escape through the needle valve into the copper lines, one runs down to the low water fuel valve, the other runs to the top of the boiler to a steam manifold, and from the steam manifold a copper line runs to the steam whistle valve, which is installed on the main steam header of the boiler plant.

Q. When the steam passes through the needle valve to the fuel cutoff valve what happens?

A. Your steam pressure in your boiler is greater than in your cylinder of your fuel valve, so when you build up your boiler pressure it collapses your cylinder and closes your valve.

Q. Closes the fuel valve? A. That is right.

Q. Cuts off the fuel to the boiler?

A. To the boiler.

(Testimony of Jack Lester Pinkerton)

Q. And does it also blow the whistle?

A. At the same time.

Q. How did the whistle valve used in the early installation compare with the fuel valve in construction?

A. The same principle, cylinder type.

Q. Did it have a piston in it? A. Yes.

Q. And the operation of that piston operated a valve in the steam line? [277] A. Yes.

Q. And that permitted steam to flow to the whistle?

A. That's right.

Mr. Fulwider: I might say here, your Honor, I don't want to burden the record, but if there is any question about when that boiler blew up in Seal Beach in 1932, I have the records here somewhere of the shop who repaired it.

The Court: The year is all-important.

Mr. Fulwider: I think I might as well offer it. I didn't ask him to come up and identify his book. We have the book which he very kindly loaned to us, and the photostats of pages. I wonder if Mr. Jamieson would like to look this over, and if it looks sufficiently legitimate to you, maybe you will stipulate what it seems to be without bothering this old gentleman. He has been in business a long time.

Q. By Mr. Fulwider: Do you know whether that Continental job was prior to or subsequent to the earthquake of March, 1933? A. It was prior to.

Q. I will ask you this question. When you finally made your sale to the Continental was it to Mr. Van Slyke?

A. Yes, he was the superintendent. You had to have his O. K. on any sales.

(Testimony of Jack Lester Pinkerton)

Q. When you made up the first castings and took those in to Master Equipment for machining, when Mr. Harvell was [278] there, at that time did you have any shop drawings?

A. We just had penciled sketches.

Q. Did you subsequently have shop drawings made?

A. I don't quite understand what you mean by having drawings. Do you mean before I went to the Master Equipment?

Q. No. After you had that first work done at Master did you have anybody make up any drawings?

A. They would have had to make up shop drawings for their own use.

Q. Do you know Mr. Beck? A. Yes.

Q. Did you have him make any drawings for you?

A. Later on.

Q. Will you examine these drawings here, Exhibit E-2, on top here, and tell me what that is and where you got it?

A. That is a low water level fuel valve. Mr. Beck made them drawings.

Q. Were they delivered to you on or about the date that they bear here, April 19, 1935?

A. I would say yes.

Q. Have they been in your possession ever since, until you gave them to me the other day?

A. They have.

Q. Will you look at this other drawing here, F-3, and tell me what that shows and approximately when it was made [279] or delivered to you, having reference to the date in the corner?

A. It is a low alarm body assembly.

(Testimony of Jack Lester Pinkerton)

Q. Is that a drawing of the model Exhibit F on the floor, alarm body? A. Yes.

Q. I believe I forgot to ask you whether or not this drawing over here fairly represents or is the shop drawing for the fuel valve Exhibit E.

A. It is the same.

Q. Was this delivered to you by Mr. Beck?

A. I don't remember if it was delivered or I picked it up.

Q. Do you remember having it made about this time?

A. That's right.

Mr. Fulwider: I believe we stipulated that this is typical of Reliance valves manufactured prior to 1930, low water alarm.

Mr. Jamieson: You have got it in evidence, haven't you?

Mr. Fulwider: No. I would like to offer this in evidence as Exhibit A, as being typical of a Reliance high and low water alarm manufactured prior to 1930.

The Court: All right.

The Clerk: Defendants' A in evidence. [280]

(The exhibit referred to, heretofore marked Defendants' Exhibit A, for identification, was received in evidence.)

Q. By Mr. Fulwider: Mr. Pinkerton, how long—I am going to ask it to you this way: Did you make any sales of the low pressure alarm and fuel valve equipment after that first Continental job? A. Yes.

Q. Have you been able to find any records or papers indicating any subsequent sales made in that period?

A. A few.

(Testimony of Jack Lester Pinkerton)

Q. I have a group here—

A. Most of them we were not able to get any records that far back.

Mr. Fulwider: I think we might as well clip all these and it will be one exhibit.

The Clerk: This will be Defendants' Exhibit N, for identification.

(The group of papers referred to was marked Defendants' Exhibit N, for identification.)

Q. By Mr. Fulwider: I have here some delivery receipts, purchase orders; will you identify those for me? Let me ask you this: are those the records you have been able to find?

A. I will say they are the records. [281]

Q. While Mr. Jamieson is examining those, let me ask you this question: Did you continue to sell your low pressure alarms and fuel valves as illustrated in Exhibits E and F after you had started manufacturing and selling your high pressure type alarm system? A. Yes.

Q. Calling your attention to these various exhibits here, which are part of N, the first one is a delivery receipt indicating delivery to St. Helens Petroleum Company January 22, 1938. It says here "4-1 inch 150 lb. W. P. Pinkerton low water alarms; 1-1/2 inch whistle control valve; 1-2 inch whistle; 1-1 1/2 inch Pinkerton boiler feed water regulator." Will you tell me what those items are from the sizes? Would those be your low pressure or high pressure systems?

A. Those would be the low pressure.

(Testimony of Jack Lester Pinkerton)

Q. By reference to this delivery receipt would you say that you had or had not delivered that material to the St. Helens Petroleum Company? A. We had.

Q. Here is a P. O. That refers to that receipt, doesn't it? A. Yes.

Q. Here is another delivery receipt of J. L. Pinkerton, Inc., 4-3-40, Lloyd Corporation. Reading the items on there, [282] can you tell me—this one says "2 low pressure low water alarms," are those the alarms, your old low pressure alarms? A. They are.

Q. Were they delivered about the date of this delivery receipt? A. They were.

Q. To the Lloyd Corporation?

A. That is right.

Q. Here is the P. O. for that. Here we come up to '44, July, some items to the Oil Steel Construction, a similar receipt, Pinkerton feed water regulator—no, Pinkerton low water alarm 50 lb. pressure. Would that be your low or your high pressure type?

A. That was the low.

Q. Finally a sale—purchase order here and delivery receipt from the Continental Oil Company, 2 Pinkerton low pressure alarms. Were those low pressure alarms ordered and delivered? A. They were.

Q. On or about the date of October, 1946?

A. Yes.

Q. To Continental Oil Company? A. Yes.

Q. And those were all of the type illustrated by Exhibit E and F, the models here in court? [283]

A. Yes.

(Testimony of Jack Lester Pinkerton)

Mr. Fulwider: I offer those in evidence, your Honor, as tending to prove continuous sale to some extent, at least, of the low pressure.

Mr. Jamieson: I object to that as incompetent, irrelevant, and immaterial to any issue in this case.

Mr. Fulwider: It is competent to this, your Honor: I gathered from Mr. Jamieson's remarks the other day that he is going to urge this sale to Continental Oil Company in '32 was an isolated sale of some equipment that had no merit. And in view of those remarks he made, I thought we had better get together what records we could and submit them.

The Court: All right. Overruled.

The Clerk: Defendants' N in evidence.

(The group of papers referred to, heretofore marked Defendants' Exhibit N, for identification, was received in evidence.)

Q. By Mr. Fulwider: Before we leave the low pressure apparatus, you discussed the construction; I would like to have you, however, point out to his Honor how this needle valve works.

A. Do you want me to come down?

Q. No, I will bring this up to you there. Tell us just what happens when this float goes down in the cylinder [284] there so we will have it clearly.

A. The float was attached to the needle valve lever, and as your water level drops in your low water alarm body your float drops down and pulls this needle valve down, which opens the needle valve and lets your steam pressure come through your ports.

(Testimony of Jack Lester Pinkerton)

Q. There are two ports, I believe, one on the side here, and one on the top? A. There is.

Q. Which goes to where?

A. Usually the one coming out of the top will go to a steam whistle which is up in the steam header of the boiler plant.

Q. And the one on the side?

A. Usually goes to the low water fuel valve.

Q. Referring to this fuel control valve, Exhibit E, I call your attention to the fact that it has a little cock in a "T" fitting here and another little fitting with a bleed opening in it. Will you tell me whether or not the unit delivered to Continental in 1932 had a bleed similar to that little fitting there? A. Yes, they all did.

Q. I was just going to ask you if you ever made one that didn't have a bleed.

A. No. If we made one—of course, understand, [285] these are just standard fittings that we buy, that is no part of the construction of the water fuel valve itself.

Q. You made the fuel valve and then bought the appropriate fittings to go with it? A. That is right.

Q. What is the purpose of that little bleed on there?

A. That is for releasing the pressure on the cylinder.

Q. I mean these little tiny pinhole bleeds.

A. That is for a constant bleed in case your needle valve in the alarm happens to get any scale underneath it, or it would be worn and have a slow leak, the constant bleed which shows here in this little pinhole is to keep the pressure relieved out of the line, keep it from closing this. In other words, it is liable to close at any time with the constant pressure dripping through that line if you didn't have a release for it.

(Testimony of Jack Lester Pinkerton)

Q. Is that bleed large enough to interfere with the operation of the valve when steam under full pressure from the boiler comes through the line?

A. No, it is not. It is a smaller hole than our needle valves, consequently it will build up a pressure, your steam pressure in the line which will operate your cylinder and close your valve.

Q. With respect to this little relief cock on the fitting there, what is the purpose of that? [286]

A. To release the pressure from your cylinder and allow the valve to open.

Q. Can you say whether or not there was always one of those furnished with one of your systems?

A. Yes.

Q. There was or was not? A. There was.

Q. For installations using low pressure boilers of the type you mentioned as being used on pumping leases and drilling rigs in 1932, was this low pressure system of yours satisfactory?

A. Well, at that time that was about the only system that was tried to be used on a fire type boiler or low pressure being used in the oil industry itself. The old Reliance was the old standard high and low alarm system in columns which was used in most all major plants and refineries. We designed that primarily for it to be used out on remote boilers in the oil fields.

The Court: That couldn't be watched?

The Witness: That's right.

Q. By Mr. Fulwider: That is where the operator had to be quite a ways distant from the boiler, perhaps?

A. Along in '32 that quite often happened. In them days they wasn't getting much for their oil, and they

(Testimony of Jack Lester Pinkerton)

wasn't spending any more money than they had to. For that reason [287] they was quite often laying off men and doubling up men that was looking after production and also taking care of plants.

Q. Did anything serious happen to the lease or the equipment on the lease if the fire was shut off before the operator got back, if he was a mile or two away, say?

A. Not them days on pumping rigs. A well could stop on a pumping rig and it didn't make much difference.

Q. How about drilling rigs in 1932 and '33?

A. At that time there was no demand, in fact, if you would go out and try to talk alarms to people on a drilling rig under low pressure with the man on the job, he thought you was crazy.

Q. If your fuel did shut off so the boiler was shut down in operations, which they were conducting at that time, was there any critical danger in a drilling rig?

A. Will you repeat that?

(The question was read by the reporter.)

A. In—

Q. By Mr. Fulwider: In 1932 and thereabouts.

A. Well, a boiler could have still blowed up in 1932, yes.

Q. What I am getting at is can you shut off, or could you at that time shut off a fuel on your boilers in your drilling rig without great expense or anything bad happening to you in the low pressure boilers that they were using [288] then?

A. You will have to repeat it, because I haven't quite got it clear in my mind.

(The question was read by the reporter.)

(Testimony of Jack Lester Pinkerton)

The Witness: Yes.

Q. By Mr. Fulwider: During the time that you were selling low pressure safety systems in the early '30's, we will say, '32, '33, '34, and '35, did you have any serious complaints or objections from your customers or your potential customers to the fuel being shut off at the same time the whistle was blown?

Mr. Jamieson: That is objected to as hearsay and calling for a conclusion.

The Court: He may testify as to the design, and that he proceeded to improve it, or something like that.

Mr. Fulwider: What I was getting at was that for that purpose that equipment was satisfactory and he did not have any complaints.

The Court: That is a negative. I will sustain the objection.

Mr. Fulwider: Your Honor, could we take a breather for a little while?

The Court: I thought you were through with the witness.

Mr. Fulwider: I am about two-thirds through. I wanted to discuss high pressure, and then I had a few more exhibits. [289]

The Court: All right.

(A recess was taken.)

Q. By Mr. Fulwider: I believe we just completed a discussion of the low pressure types. How did you happen to add to your line of low pressure equipment what you call your high pressure alarms and fuel shutoffs?

A. Well, in the last few years in the oil industry as they were going into big rigs, they kept getting higher pressures on boilers; as the pressures went up on boilers,

(Testimony of Jack Lester Pinkerton)

then we had to go into a higher pressure to meet the codes, the correct pressure that would fit on these boilers, particularly when they got into the 350-pound pressure. Back in the low pressure it was from 100 to 125-pound pressures.

Q. When they were using—I imagine those high pressure boilers were mostly on drilling rigs, weren't they?

A. That is right.

Q. Was there much change in pumping leases?

A. No.

Q. But in drilling rigs they went to the high pressures? A. Yes.

Q. With the high pressure boiler and a hole that is going down to the depths to which they have been sinking them in the last eight, ten years, are there any bad [290] effects from having the boilers shut down?

A. Yes.

Q. Will you explain that just briefly to us?

A. A boiler shutdown on a drilling rig a matter of a few minutes, we will say in case the fire went out, a matter of five, ten minutes, the driller operating the drilling equipment in the rig wouldn't be able to pick the drill pipe up off the bottom if his steam pressure dropped very much.

Q. That being the case what did you decide to do with respect to this new high pressure equipment which you were going to put out? When was it, in about '38?

A. It was in the latter part of '37 or the first of '38 when we started to make our changes over to high pressure, that is, high pressure body. We still continued with the same system, alarm system.

(Testimony of Jack Lester Pinkerton)

Q. You added another valve alongside—

Mr. Jamieson: We object to leading and suggestive questions. Can't you ask him what he did?

The Court: What did you say?

Mr. Jamieson: I object to counsel leading the witness. I think the witness can tell what he did without being led.

The Court: Yes. All right.

Mr. Fulwider: I don't want to lead him where it is important, but I look at this as strictly a basic question.

Mr. Jamieson: I don't know what is important and what [291] isn't. I would rather he wouldn't be led.

Q. By Mr. Fulwider: Your high pressure equipment, that is, the alarm body and valve mechanism, had two valves side by side; your old equipment had one valve—

Mr. Jamieson: We object to counsel testifying.

Mr. Fulwider: My God, it is in the record; you have got drawings.

Mr. Jamieson: Can't you ask him without leading him?

Q. By Mr. Fulwider: Will you please tell us how the valve mechanism in your high pressure alarm body is constructed?

A. We have one float, two arms, two needle valves; your arms are constructed side by side with a pin from the float arm extending over to a bracket or hole in our fuel valve or short lever, so when your float drops down so far it opens the whistle, and if your water level in your boiler continues to go on down it drops down lower, and then it catches the side of that hole or bracket—

Q. Pardon me. I didn't mean to interrupt you. I was getting ready for the next question.

(Testimony of Jack Lester Pinkerton)

(The answer thus far was read by the reporter.)

A. (Continued) Bracket is not correct.

Q. Let me show you Exhibit C. Using this to explain, will you tell us how that operates?

A. Yes. There is a float that is hooked onto this [292] arm lever, and as your water level in your boiler starts dropping down to a dangerous low level your float continues to follow down, because your alarm body is hooked onto your boiler. As it starts down it first opens a whistle, as this valve starts to open, then as it drops down it catches this second lever, this boss with the hole in it. It can drop about five-eighths to three-quarters of an inch. It catches and opens that one, lets steam pressure go down through to the copper line leading to our fuel valve, and allows it to build up a pressure and close the fuel valve.

Q. So that in that system you first blow the whistle—

A. That's right.

Q. And then you shut the fuel valve off later?

A. Yes.

Q. Is there any reason for having a time interval between the blowing of the whistle and the shutting off of the fuel valve?

A. On drilling rigs, yes, because they have a constant attendant at the boilers. I mentioned a few moments ago if steam pressure drops down very much it is very important on the drilling rig, as the water drops down a little bit, sounding an alarm as a warning signal to the fireman or engineer, it gives him time to correct his water level in the boiler before the water drops low enough to shut out his [293] fires, which is very dangerous on a drilling rig.

(Testimony of Jack Lester Pinkerton)

Q. At the time you entered the business of making boiler safety equipment were you familiar with the Reliance valve, Exhibit A? A. Yes.

Q. This high and low water alarm? A. Yes.

Q. Are you familiar now with the Blanchard Inferno system of boiler alarm?

A. I can't say that I am familiar with it.

Q. Well, I call your attention to this 2-valve model, Exhibit 5; can you tell me what advantages, if any, there are in your apparatus over the Blanchard Inferno apparatus, so far as the valve mechanism goes?

Mr. Jamieson: That is objected to as incompetent, irrelevant, and immaterial.

Mr. Fulwider: I think it is material, your Honor.

The Court: Read the question.

(The question was read by the reporter.)

Mr. Jamieson: It will not avoid infringement to make any additions to the infringing structure.

Mr. Fulwider: There are substantial differences between the two structures. Mr. Jamieson will argue that they are equivalents, and we have done what he did. Mr. Blanchard says it was 75 per cent as effective as his was. I would [294] like Mr. Pinkerton to show why we are better than Mr. Blanchard's.

Mr. Jamieson: That is not in issue.

The Court: The objection is overruled.

The Witness: Will you repeat the question, please?

The Court: Mr. Blanchard was allowed to testify very fully as to why in his opinion the accused device achieved the same results in substantially the same manner, under the doctrine of equivalents. I did not allow him to use the word "equivalent." Certainly this man can, as a part

(Testimony of Jack Lester Pinkerton)

of his case, and especially because he has a counterclaim, testify that his device achieves things that are not possible to be achieved by the other; that it has advantages over the other. And if it does, then it is not the equivalent any more.

Mr. Jamieson: If he does something in addition to the infringement, it is a mere addition and doesn't avoid infringement.

The Court: I know, but that is not the point. We are talking about the doctrine of equivalents.

Mr. Jamieson: That was not his question.

The Court: I know. But I know what it is directed at. If this apparatus with the changes this man has made with it achieves other results which cannot be achieved by the Blanchard apparatus, then it is invention over the prior art, including Blanchard. The doctrine of equivalents calls for [295] substantially the same result by different means.

Mr. Jamieson: He is not asking him whether he achieves the result of Blanchard.

The Court: He cannot ask him that, because that would be a conclusion.

Mr. Jamieson: I would not object to that.

The Court: He is asking for facts.

Mr. Jamieson: I would not object to that at all.

The Court: The question as propounded is very simple, and it calls for results as compared with the Blanchard, and that is always permissible.

Read the question.

(Testimony of Jack Lester Pinkerton)

(The question was reread by the reporter as follows:

“Q. Well, I call your attention to this 2-valve model, Exhibit 5; can you tell me what advantages, if any, there are in your apparatus over the Blanchard Inferno apparatus, so far as the valve mechanism goes?”)

The Witness: We claim we have a much safer acting device than this, because we allow more freedom in our construction of the valves to eliminate corrosion or scale from scumming in between the vises here, which will allow them to freeze up and not operate. Ours is much freer.

Q. By Mr. Fulwider: I call your attention here to Exhibit B, maybe that will assist you in your remarks.

A. Here is an illustration right here. Taking the [296] weight of a float, which is about four inches long, and all it is—

Q. You had better speak up. I don't think the reporter can hear you.

The Court: I am just looking at the device; you do not need to talk in my ear.

The Witness: I am sorry.

Now, you can notice here you are getting a sticking action from your needle valves, and the weight of a float operating that, there isn't enough weight on that float floating in water, which you will have a float for a demonstration, it will not allow free action of them valves.

The Court: Yes?

The Witness: (Continuing) So for that reason if you will allow me to look at our valve, I will show you your freedom of actions.

(Testimony of Jack Lester Pinkerton)

Q. By Mr. Fulwider: Show this one here to his Honor, Exhibit C.

A. You will notice here we allow much more freedom in here to get away—if you take in any boiler with steam, you can't get away, regardless of your treatment of the water, from a certain scum or a fine scale or corrosion, which is getting this action right here (demonstrating). In fact, you can turn the whole valve over. I am trying to show you that a float cannot operate them valves, the [297] function of them, that is why we left a clearance of operation so there could be no sticking action in them. This is a much safer valve, construction of a valve, than these are (indicating).

The Court: What is the advantage of the greater freedom of action?

The Witness: As a safety device.

The Court: It is not as likely to get stuck?

The Witness: That's right.

The Court: And the other one might, is that it?

The Witness: It has a tendency much more so, because you will notice here your freezing action right there on your rings now.

Q. By Mr. Fulwider: Does this extra length that you have here on your fuel valve contribute to that freedom any? That is, by having this link here loose with respect to this pin, and having this link—

A. Do you mean the freedom of the complete assembly?

Q. Yes.

The Court: Yes. A. Yes, it does.

(Testimony of Jack Lester Pinkerton)

Q. By Mr. Fulwider: By having a link here, extra link, instead of having a connection directly to the valve?

A. Yes.

Mr. Jamieson: We object to that as leading and [298] suggestive.

The Court: That is all right.

Mr. Fulwider: I am describing the apparatus and asking him about it.

The Court: You are both doing the same thing, and each objects when the other fellow does it.

A. We have two separate elements—

Mr. Jamieson: Of course I will get a chance on cross examination.

Q. By Mr. Fulwider: You might show this to his Honor too.

A. May I finish on this?

The Court: Go ahead.

A. These are two separate elements, where from one float here you are controlling all of your elements together. Here we have two separate elements and two separate valves.

Q. By Mr. Fulwider: When you said "here" the last time you were pointing to Exhibit C?

A. Yes.

Q. And the first one you were pointing to was Exhibit B? A. Yes.

Q. By the way, Mr. Pinkerton, do you know of any boilers equipped with Mr. Blanchard's control apparatus or [299] safety apparatus that have ever blown up?

A. Yes.

(Testimony of Jack Lester Pinkerton)

Q. Can you tell me approximately when and where?

A. For the Ohio Oil Company out here in Gardena, right along off the side of Western Avenue, in 1945, it blowed up a boiler there.

Q. Did you see that boiler after it blew up?

A. Yes.

Q. And that was equipped with Blanchard alarms?

A. Alarms and fuel valves.

Q. When did you first start making the plug type valve assembly illustrated in Exhibit 12 here, this one here (indicating)?

A. In '44.

Q. I call your attention to this drawing in front of you, Exhibit L; can you tell me what that drawing is and where it came from?

A. Yes. There was a time that we could not get steel castings, it was not available, so at that time in order to take care of our customers, not being able to get steel castings I went up to the Crane Company to see if I would be able to have alarm bodies made up out of pipe. In talking to Mr. Fay, I believe he was the engineer at that time for the Crane Company, he made up this drawing and sketch. We took in some sketches to him, and from them he made up this [300] drawing.

Q. Did you have some alarm bodies made in accordance with this blueprint, Exhibit L?

A. Yes.

Q. And they were made by the Crane Company?

A. Yes.

Mr. Fulwider: I would like to offer that in evidence, I believe it was only marked for identification before, as illustrating the testimony of both Mr. Fay and Mr. Pinkerton.

(Testimony of Jack Lester Pinkerton)

The Clerk: Which number is that?

Mr. Fulwider: That is L.

The Court: Admitted.

The Clerk: Defendants' L in evidence

(The blueprint referred to, heretofore marked Defendants' Exhibit L, for identification, was received in evidence.)

Q. By Mr. Fulwider: Did you say when you stopped—

Mr. Jamieson: Could you talk a little louder? We can't hear you.

Q. By Mr. Fulwider: Did you say when you stopped making those plug types?

A. Some time in '46. We made the plug types approximately around a year, 15 months.

Q. I believe I showed Mr. Fay a group of sheets, receipts and P. O.'s; can you identify those as to what they [301] are and where and when you got them?

A. I got them from the Crane Company. That would be their slips.

Q. What does this first sheet indicate to you, if anything?

A. That indicates that they made up three of the alarm bodies for us.

Q. And that is dated May 12, 1944. Would you say that was the first or later orders made by them?

A. That was the first.

Mr. Fulwider: I don't think there is any point of going through those again, your Honor. I offer those in evidence. They were merely marked for identification before.

(Testimony of Jack Lester Pinkerton)

The Court: They may be received.

The Clerk: Defendants' Exhibit M in evidence.

(The group of papers referred to, heretofore marked Defendants' Exhibit M. for identification, was received in evidence.)

Q. By Mr. Fulwider: Referring to these photographs, Exhibit 13-A, have you examined this photograph? A. Yes.

Q. Will you tell me what that shows?

A. It shows our alarm body and the outside of our needle valve flange, which has been reconstructed by somebody outside of ourselves, for a reason that I can't answer. [302]

Q. Did you ever make or sell a structure such as shown in the upper portion here, that is, this extra stuff that is fastened on the flange? A. We did not.

Q. When was the defendant Pinkerton Corporation incorporated, approximately? A. '38.

Q. Are you an officer of the Pinkerton Corporation?

A. Yes.

Q. What is your office?

A. President and general manager.

Q. At the time of the incorporation of the defendant Pinkerton Corporation, did you sell or did you not sell your business to the corporation?

A. We sold the business to the corporation.

Q. Since the date of incorporation have you conducted any business of manufacturing or selling alarm or safety systems as an individual? A. No.

(Testimony of Jack Lester Pinkerton)

Q. You have, however, acted in manufacturing and selling those systems as the president of the Pinkerton Corporation? A. Yes.

Mr. Fulwider: That is about all, except if I may have a couple of exhibits to introduce by this witness. [303]

The Court: All right.

Mr. Fulwider: These photographs of exhibits, E and F.

Q. By Mr. Fulwider: I show you here three photographs marked E-1, F-1, and F-2; can you tell me who made those and under whose direction they were made, and what they show?

A. I am not sure I understand the question correctly.

Q. What do those photographs show? I mean what was photographed?

A. This shows a complete assembly of the low water alarm body.

Q. Did you have that photograph made?

A. Yes.

Q. From what was it made?

A. From the body, the same as it is down there.

Q. Exhibit F? A. Exhibit F.

Q. When was it made? A. This picture?

Q. Yes. A. About three or four days ago.

Q. By whom?

A. The Inman Company at Long Beach.

Q. Is the same true of these other two photographs here? A. Yes. [304]

Q. Exhibits E-1 and F-2? A. Yes.

Mr. Fulwider: I offer those in evidence, your Honor, as being photographs of the models.

(Testimony of Jack Lester Pinkerton)

The Court: They may be received.

The Clerk: E-1, F-1, and F-2, in evidence.

(The photographs referred to, heretofore marked Defendants' Exhibits E-1, F-1, and F-2, respectively, for identification, were received in evidence.)

Mr. Fulwider: Our Exhibit D, I believe, is not in evidence yet?

The Court: What is D?

Mr. Fulwider: It is just a drawing that I had my draftsman make up of the apparatus, Exhibit C. I would like to offer that.

The Court: All right.

The Clerk: D is in evidence. This tab on it is ambiguous, it shows it for identification only.

The Court: Let's put it in.

The Clerk: D in evidence.

(The drawing referred to, heretofore marked Defendants' Exhibit D, for identification, was received in evidence.)

Mr. Fulwider: These drawings that were E-2, F-3, and F-4, those are the old drawings. I believe the witness [305] identified these and they have been identified by the draftsman. I would like to offer these in evidence. That is, E-2, and F-3.

The Court: All right.

Mr. Fulwider: I offer F-4.

The Court: All right.

(Testimony of Jack Lester Pinkerton)

Mr. Fulwider: And H, also.

The Court: All right.

(The drawings referred to, heretofore marked Defendants' Exhibits E-2, F-3, F-4, and H, respectively, for identification, were received in evidence.)

Mr. Fulwider: That is all.

The Court: Cross examine.

Cross-Examination

By Mr. Jamieson:

Q. Mr. Pinkerton, I understand from your testimony that you were personally present when the installation was made at the Continental Company in Seal Beach in 1932 or '33, whenever that was; is that right?

A. I was usually present at most of the installations, but I can't pick out any particular one.

Q. Then you wouldn't say that you were present at that installation?

A. I say I couldn't pick out any single one. I wouldn't say I wasn't. [306]

Q. Did you install more than one device for the Continental Company at Seal Beach? A. No.

Q. You only made one installation in your entire life down there, is that right?

A. Are you speaking of me myself personally?

Q. You yourself personally.

A. Myself personally I didn't install any. They had men do it.

Q. Then you supervised the installation of only one, is that right? A. Yes.

(Testimony of Jack Lester Pinkerton)

Q. And what do you now remember of that installation, if anything?

A. I don't understand the question.

Mr. Jamieson: Read the question.

(The question was read by the reporter.)

The Witness: It was put on or installed.

Q. By Mr. Jamieson: Do you remember the parts that went into that installation?

A. Are you speaking of parts of my device?

Q. The mechanism that went into the installation.

A. Yes.

Q. Tell us in your own words what went into that installation. [307]

A. What part of the installation?

Q. The entire thing that you put in.

A. Of our elements?

Q. Yes.

A. There was an alarm, a fuel valve, a steam whistle valve, of our elements. Then standard pipes and fittings and connections.

Q. Have you made any effort to locate that particular mechanism?

A. I don't just understand what you mean.

Q. Have you made any effort to locate the structure that went into that Continental job in 1931 or '32, or whenever you put it in there?

A. You mean have I went out to try to find out where it is?

Q. That is what I want to know. A. No.

Q. You have made no effort to locate the exact parts that were in there? A. No.

(Testimony of Jack Lester Pinkerton)

Q. Did you see the parts again after they were installed?

A. That I couldn't be positive. I serviced them, possibly, yes, some of them.

Q. Do you remember of your own independent knowledge [308] that you serviced them?

A. Yes.

Q. When? A. I don't remember.

Q. What year did you service them?

A. I don't remember what year.

Q. What did you do when you serviced them?

A. I went out there and examined them, whatever they needed I fixed.

Q. How often do you have to service parts?

A. That depends.

Q. How often should these valves be serviced?

A. That depends.

Q. Depends on what?

A. They can get scale underneath them, depending a lot on the experience of the operator, your pressures.

Q. Can you tell whether there is scale under them without taking them apart? A. No.

Q. Then you have to have some kind of policy about inspecting, don't you? A. That is right.

Q. What is the policy of your company?

A. If we have a needle valve leaking our policy is to look at the needle valve, test it and find out what is wrong [309] with it.

(Testimony of Jack Lester Pinkerton)

Q. After you make an installation do you go out and inspect them regularly, or do you wait until the company calls you and tells you there is some trouble?

A. Both. If I am passing by I possibly stop and inspect them. If not, I wait until they call.

Q. How often do you make those inspections?

A. No specific time.

Q. What kind of needle valve was there in that job at Seal Beach?

A. The same as in that one down there (indicating).

Q. Will you describe it? Not this one, but the one that you put in down there.

A. It was a needle valve approximately a quarter of an inch round, and the same length as the ones down there, approximately (indicating).

Q. Is that this one that you are referring to?

A. Yes.

Q. You mentioned that single valve has two openings, is that right, one for—

A. Not a single valve couldn't have two openings.

Q. What were the two openings that you referred to in your direct examination?

A. This top flange or plate, one out of the top and one out of the side. [310]

Q. Isn't that a single valve? A. Yes.

Q. Doesn't it have two openings?

A. The valve itself?

Q. No. The device.

A. Let me see if I understand correctly. May I separate these so I will know which one you are talking about?

(Testimony of Jack Lester Pinkerton)

Q. All right.

A. Now which one are you talking about?

Q. Do you call the whole thing a valve? A. No.

Q. What do you call the black part?

A. That is the cap or lid.

Q. Has that lid got two openings in it?

A. Yes.

Q. When did you first start making those two openings in that cap or lid?

A. The latter part of '31 or early '32.

Q. Did you always put those in? A. Yes.

Q. Was that in the one down at Seal Beach?

A. Yes.

Q. When you open that single valve it causes the steam to go simultaneously into those two openings, doesn't it? [311] A. Yes.

Q. So there is no period of time between the operation of one valve or the other, is there? A. No.

Q. Is there any way that that could be operated to cause delayed action of the opening of one valve instead of the other? A. This valve here?

Q. Yes. A. No.

Q. The device that is accused and charged to infringe, as shown in your catalogue, however, is susceptible to that delayed action, isn't it? A. That is right.

Q. When did you first start making the valve that had that structure in it, that delayed structure in it?

A. We first started on that in the latter part of '37 or early '38.

Q. Your man testified that he first had a conference with you in '38; is that correct?

A. He had them every day.

(Testimony of Jack Lester Pinkerton)

Q. I mean on that particular structure.

A. I couldn't answer if he did that morning or not.

Q. What did you say to him when you told him to make that structure? [312]

A. I would say I issued an order.

Q. I don't want to know what you would say; I want to know what you did say.

A. I asked him if he would make it.

Q. What did you give him to make it from?

A. The castings.

Q. Where were the castings made? Did you make the castings before you had drawings?

A. Possibly our first one from a sketch.

Q. That is what I meant. Have you got that sketch?

A. No.

Q. Have you got any sketch to show the structure that was installed at Seal Beach? A. No.

Q. Have you got any record at all to show the exact structure that was down there at Seal Beach.

A. We have not.

Q. You just rely solely on your memory, is that right?

A. We haven't the records.

Q. You are relying solely on your memory as to what was put in there, is that right? A. Yes.

Q. Have you the sketch that you used to give the draftsman to make the drawings in 1937 and '38 for the infringing structure? [313]

A. I don't understand what you mean, the "infringing structure."

Q. The one that it is charged to infringe as shown in your catalogue, Exhibit 11.

A. Will you repeat the question, please?

(Testimony of Jack Lester Pinkerton)

(The last two questions were read by the reporter.)

The Witness: I will have to ask you to repeat it again.

(The questions were reread by the reporter.)

The Witness: I don't have the sketches for our structure, no.

Q. By Mr. Jamieson: Are you familiar with the Blanchard structure? A. I have seen it.

Q. When did you first see one?

A. It was either late '38—I would say late '38.

Q. Where?

A. In the Valley. I don't remember if it was in the Wrigley field or the Rio Bravo field.

Q. Did you ever see any of their catalogues?

A. Do you mean up until now?

Q. No. Have you ever seen any of their catalogues?

A. Yes.

Q. When did you first see one?

A. I would say approximately around the same time.

Q. When is the first time that you ever heard of the [314] plaintiff's structure?

A. That I don't remember.

Q. You don't remember?

A. Not the first time.

Q. Did you see the plaintiff's structure at the Standard Oil that was installed in '34?

A. No. Do you mean have I ever seen it, now?

Q. Yes.

The Court: Did you see it in '34?

Q. By Mr. Jamieson: Did you see it in '34 is my first question. A. No.

(Testimony of Jack Lester Pinkerton)

Q. My second question is, did you ever see it, that particular one?

A. I don't know the number of this plant, so that I couldn't answer.

Q. Referring to this Exhibit B, which has been offered in evidence, do you consider that in an advanced state of disrepair?

A. Would I consider this in an advanced state of—

Q. Disrepair. Does it look like it has been neglected?

A. Which part of it do you mean?

Q. All of it.

A. I would say it has been used. [315]

Q. Does it look like it has been neglected? Has it been serviced? A. Has it been serviced?

Q. Yes. A. I can't answer that.

Q. Well, I will ask you to compare that, then, with Exhibit 5. Tell me if there is any difference between the two.

A. One is used and the other one hasn't been used.

Q. Does Exhibit 5 work as easily as yours does, as your device shown in Exhibit 12?

A. This valve does not.

Q. It works freely, doesn't it?

A. Yes, that works free.

Q. Now, then, if Exhibit B doesn't work free, it is because it has been rusted by neglect, isn't that true?

A. Not necessarily.

Q. Why not? A. Because of corrosion.

Q. Well, corrosion or rust. I use the words the same.

A. There is a lot of difference between corrosion and rust.

The Court: I do not think it is material to take that up.

(Testimony of Jack Lester Pinkerton)

Mr. Jamieson: They went into it, so I was trying to [316] clear the matter up.

Q. By Mr. Jamieson: Where did you get this Exhibit B?

A. I can't answer it. I picked up several of them. I picked up 15 or 20 they asked me to service.

Q. Did you get it in a junk yard? Do you know where it came from?

A. That particular one I think came from the Superior Oil Company of Ventura.

Q. Where was it when you found it?

A. They had it put away in a desk, I believe, in what they call their dog house. In fact, there were several they had laying in there.

Q. Why was it put away?

A. They were froze up. In fact, I went to the Superior Oil Company there and they showed me these valves. I suggested to them, in order to free them, to knock their pins out. They had some practically new. If you want the story, I am going to give it to you, unless somebody stops me. They had one practically new in there that was frozen up. I suggested to them taking the pins out and file these, free them up so that they could work. The idea was to help the customer up there that had them on the job.

Q. Have yours ever become corroded or rusted, your valves, like Exhibit 12, through neglect of the customers?

A. I wouldn't say neglect. That depends on the [317] condition of your water.

Q. Have you ever seen any of yours that were frozen like Exhibit B?

A. No.

(Testimony of Jack Lester Pinkerton)

Q. Have you ever seen any of yours that were frozen?

A. No.

Q. Any of them that were rusted or corroded?

A. I would say no.

Q. Is there something in yours that prevents it from being corroded? Is there something in the material from which it is made?

A. Bronze won't corrode, and neither will stainless steel.

Q. Is yours made of bronze or stainless steel?

A. One is stainless steel.

Q. What is Blanchard's made of?

A. Your rollers, I can't answer. That is your trouble, your rollers in there.

Q. Calling your attention to Exhibit 5, is that made of stainless steel?

A. I would say the outside body, your valve stems and your arm. Understand, I am not an expert on stainless steel. I would say yes.

Q. About this Ohio explosion that you were telling us about, did you investigate that personally? [318]

A. We had equipment out there.

Q. Did you see the job after the explosion?

A. Yes, a couple of weeks or a week afterwards.

Q. What did you see?

A. I seen where the boiler had been blowed up.

Q. Did you see any Blanchard equipment on it?

A. Yes. It had alarms and fuel valves, and my water regulators.

Q. Was there any mud in the water?

A. No, they can't operate boilers or drilling rigs with mud in them.

(Testimony of Jack Lester Pinkerton)

Q. Do you know why they said it blew up?

A. That I don't know. Low water, we know.

Q. On this structure that was down at Seal Beach did you have a leather cup like you have in your present structure?

A. In the cylinder you mean?

Q. In the cylinder, yes. A. Yes.

Q. Did that leather cup act as a seal? A. Yes.

Q. Do you consider that an equivalent or the same thing as the Blanchard diaphragm?

A. The same thing, no.

Q. What?

A. I can't call it the same thing, no. [319]

Q. Do they do the same work in substantially the same way?

A. I would say yes.

Q. Referring to this Exhibit 5 and our Exhibit 12, would you say that the lever arms do the same work in those two in substantially the same way?

A. You mean as the water raises and lowers do they travel with the float?

Q. Yes. A. Yes.

Q. Does your float work substantially the same as the float on Blanchard's?

A. Every float that is in a column—

Q. Answer that one question. Do they both work the same?

A. Does the float raise and lower, float in the water?

Q. Yes. A. Yes.

Q. As the float lowers in the Blanchard device, Exhibit 5, would you say that the first valve to be unseated is the valve to the whistle?

A. I don't know what you mean the first valve to be unseated, but I would say the one with the shortest slot in it. I don't know how he has them constructed.

(Testimony of Jack Lester Pinkerton)

Q. Then we will take yours, Exhibit 12. As the [320] float lowers which valve unseats first, which valve opens first? A. This one (indicating).

Q. What does that lead to?

A. To your whistle.

Q. Which valve opens second?

A. The one that is on this short lever to your fuel valve.

Q. How much of an interval is there between the opening, in point of time?

A. Between five-eighths and three-quarters of an inch.

Q. How much of an interval does that amount to in the height of the water in the boiler?

A. That is what I mean, five-eighths to three-quarters of an inch.

Q. How much of an interval does it amount to in time between the two?

A. There would be no answer for that. That depends on how you pull boilers, under what condition or load. There is no time element for that.

Q. In the average case how long is it between the time that the whistle blows and the time that the fuel is shut off? A. There is no answer to that.

Q. Approximately. [321]

A. There is still no answer for that. A man can go out there with the boiler sitting idle and it can sit there all day and never drop. But if it is under a 300 per cent overload it can drop in two minutes.

Q. How much time does the fireman have to come and take care of the water from the time the whistle blows to the time his fire goes out?

A. If they are idle it can take half a day.

(Testimony of Jack Lester Pinkerton)

Q. What advantage is there in having two valves, then, instead of one?

A. In case he goes to some place and they are under working conditions, then a matter of a few minutes makes quite a difference.

Q. How much time has he got to get there?

A. That goes back again to what we just got through saying. That depends on what they were doing.

Q. When you go to sell one of these valves, what do you tell the prospective purchaser on that subject?

A. That is, how much the water would drop and be on that point, there is nothing we can tell a man if he knows what he is doing that would do us any good, because he knows. The time element is governed by the amount of load, the size of your drilling rig, the size of your boilers; there is a lot of elements that can enter into it. So there is no answer for a time element. [322]

Q. When you go to sell one of those you have to sell it to him on the basis—

A. It is a low water alarm and a low water fuel valve shutoff.

Q. What advantage do you tell him there is in having the two together?

A. One is for a warning, whistle or alarm, and the other is to cut out the fires.

Q. What interval do you tell him there is between the two?

A. That we don't tell him. I don't tell him.

Q. What do you tell him is the advantage of having the two?

A. The safety for boilers.

(Testimony of Jack Lester Pinkerton)

Q. Why is it safer with two valves instead of one?

A. One acting as a fuel valve low water, if they are in operation and working condition, will put out the fires.

Mr. Jamieson: Would you mind reading that?

(The answer was read by the reporter.)

Q. By Mr. Jamieson: In your structure that you are now making the fires are put out by shutting off the fuel valve, isn't that true? A. Yes.

Q. And that is shut off a period of time after the whistle blows, isn't that true? [323]

A. What does the word "period" mean?

Q. You don't know what "period" means?

The Court: A lapse of time is a period of time, any lapse of time is a period of time.

A. Yes, yes.

Q. By Mr. Jamieson: On the other hand, on this device that is not an infringement, this Exhibit E and F, they operate simultaneously, don't they? A. Yes.

Q. Is there an advantage in having a lapse of time between the operation of the whistle and the operation of the fuel cutoff valve?

A. That depends on the conditions you are working under, or what job you are working under.

Q. Is it more expensive to make the one you are making now than the other one? A. Yes.

Q. Do you charge more for that one than the other one? A. Do you mean now?

Q. Yes. A. Yes.

Q. Why would anybody pay more for that? There must be some advantage.

A. Pay more for what?

(Testimony of Jack Lester Pinkerton)

Q. For the one that has the lapse of time between the [324] time the whistle blows and the time that the fuel is shut off.

A. Your conditions in the oil field has made that. When we made that—it is out for remote plants.

Q. Do you consider that as an advantage?

A. Under the present conditions, yes. Under them conditions, no.

Q. When you made that installation in Seal Beach you made it in approximately 1933, didn't you?

A. The question again, please?

(The question was read by the reporter.)

The Witness: '32.

Q. By Mr. Jamieson: When did you next sell or install a device like that?

A. I do not know the correct dates.

Q. The earliest record you have there is 1938?

A. Records is very hard to get. I can name a few small operators.

Q. Have you got any record of any sale between 1932 and 1938 of the device which you call Exhibit E and F?

A. Between '32 and '38?

Q. Yes.

A. I can't remember any specific date, no.

Q. You don't know of any single sale that was made between 1932 and 1938, is that right?

A. We have evidence there—or am I allowed to look [325] at them?

Q. Of your own memory you don't remember making another sale after that?

A. I would say yes.

(Testimony of Jack Lester Pinkerton)

The Court: He says he can't fix a date but he made many sales.

The Witness: I said yes, we made sales.

Q. By Mr. Jamieson: Between 1933 and 1938?

A. Yes.

Q. When did you make one?

A. I can't give you the correct date.

Mr. Fulwider: Could I inject a minute?

The Court: Let's not comment on the evidence. I know what the evidence is.

Mr. Fulwider: I was going to say that we have some coming, but they didn't get here today, from Petroleum Securities Company. There was a slip-up.

The Court: You don't think this case is going on indefinitely, do you?

Mr. Fulwider: No. That is why I didn't say anything about it before.

The Court: All right.

Q. By Mr. Jamieson: Referring to this Exhibit N, I call your attention to this first order that says J. L. Pinkerton Company, January 22, 1938. Do you have any order [326] earlier than that?

A. Not with me.

Q. Did you make a diligent search for those orders before you came to court? A. Yes.

Q. This was the earliest order that you could find, is that right?

A. No. We have one for the Petroleum Securities that isn't here now, that was in '35.

Q. You haven't offered that in evidence?

A. Not yet. It is on its way here now.

(Testimony of Jack Lester Pinkerton)

Q. This one that is dated in '38 doesn't have a fuel valve on it, does it?

A. There was quite a number of them didn't.

Q. That one has no fuel valve, does it?

A. No, it hasn't.

Q. So that one really shouldn't have been offered, should it?

The Court: Don't ask him about that. Don't argue with him.

Mr. Jamieson: That is right. I withdraw that question.

Q. By Mr. Jamieson: What is the first one that does show a fuel valve on it, the first order? The next one doesn't show a fuel valve either? Withdraw the question. The next one dated 1940 doesn't show a fuel [327] valve either, does it? A. It does not.

Q. So that that one has no fuel valve. The next one is dated 4-3-40. Does that show a fuel valve?

A. Yes.

Q. It says "Type X-1746."

A. That is type Y.

Q. What type is that?

A. That is referring to the one that is down there (indicating).

Q. That was sold in 1940, 4-3-40, is that right?

A. Yes.

Q. That was the first sale, namely, in 1940, that you have any record of since 1932 of the device known as Exhibit E and F?

A. You are speaking of records?

(Testimony of Jack Lester Pinkerton)

Q. Yes.

A. Outside of the Petroleum Securities that is coming in. But here, yes.

Q. And you have not been able to find any other record of a single sale from 1933 to 1940 except this one, is that right? A. Nineteen when did you say?

Q. 1932, we will call it, until 1940, a period of eight years. During eight years you didn't make a single [328] sale of Exhibit E and F?

A. Here is one now, '38.

Q. That has no fuel valve on it.

A. What do you mean, fuel valve?

Q. Yes. A. I haven't the record here.

Q. You didn't sell a single fuel valve from 1932 to 1940? A. Yes.

Q. There is no record here of any fuel valve sales?

A. It is very hard to get records over six years back.

Q. And you have no record of any sale from—

The Court: You have asked that question half a dozen times and he has answered it. He has said he has made sales but he has no records.

Q. By Mr. Jamieson: You say you have made a sale without a record? A. Yes.

Q. How many sales?

A. That I can't be positive. I would say any place from 25 to 100.

Q. And you can't find any record of it?

A. Lots of those small operators—

The Court: I would appreciate it, Mr. Blanchard, if you would sit down please. It is proper for a lawyer to stand [329] up, but it is not proper for a litigant or a witness to stand up.

(Testimony of Jack Lester Pinkerton)

Mr. Blanchard: Excuse me.

The Witness: That question again, please.

Mr. Jamieson: Maybe he will talk louder if I stand back here.

The Court: If he is hard of hearing he may come up closer, but it is not proper for him to stand.

Mr. Jamieson: May he sit in the jury box?

The Court: Yes. If he would have told me he was hard of hearing I would have let him sit there.

Mr. Jamieson: I didn't know it either.

Will you read the question?

(The last question was read by the reporter.)

The Court: I suggested that it has been asked and answered many times.

Q. By Mr. Jamieson: Do you know of any installation of a fuel valve other than the one at Seal Beach between 1932 and 1938, any individual installation?

A. That we had? Yes.

The Court: All right. Then name some of the companies and places.

The Witness: We put some on for the small operators, the Hoyt people.

Q: By Mr. Jamieson: When did you put that in? [330]

A. I would say some time approximately around '33 or '34. Also Sepple, C. G. Julian in Santa Fe Springs.

Q. When did you put that in?

A. I would say around '34 or '35.

Q. Do you know of any others?

A. The Elmer Oil Company in Venice.

(Testimony of Jack Lester Pinkerton)

Q. Did you inquire of any of them before this trial to see if they had anybody that remembered it?

A. Most of them little companies was absorbed, taken over, or changed names.

Q. Did you look for them?

A. I looked for some. Some I didn't. I didn't have time. I still had to work for a living. You fellows have taken so much of my time the last couple of years. You don't give me time to do anything.

Q. I haven't taken any of your time.

The Court: Let's not get into any arguments.

Q. By Mr. Jamieson: Are you familiar with the patent in suit? A. In what way do you mean?

The Court: The paper patent.

A. Yes, I have read it.

Q. By Mr. Jamieson: Have you compared the structure of the patent in suit with your own structure?

A. I am not familiar with patents, so I left that to [331] Mr. Fulwider.

Q. So you know nothing about what the patent covers or what structure it is, is that right; you leave that up to your lawyer? A. That's right.

The Court: He is a smart man.

The Witness: Thank you.

Q. By Mr. Jamieson: Referring to these valves in evidence, I will first direct your attention to this Exhibit 5 and ask you when the float lowers and the rod or arm member lowers, it pulls off of the seat one valve, doesn't it? A. Yes.

Q. Now, then, referring to your structure Exhibit 12, when the arm of that structure lowers it pulls one valve off its seat, doesn't it? A. The first, yes.

(Testimony of Jack Lester Pinkerton)

Q. Now, then, comparing the operation in the way that those two valves operate, they operate exactly the same way, don't they? A. No.

Q. Is there any difference between the operation of the first valve coming off its seat in Blanchard's Exhibit 5 and in your device Exhibit 12; is there any difference in the way they operate? [332]

A. In the first valve?

Q. Yes, the first valve. They operate exactly the same? A. I would say the same.

Q. The first valve? A. Yes.

Q. So, so far as the first valve is concerned yours does the same work and it does it in the same way as Blanchard's, doesn't it?

A. And many others, yes.

Q. Answer that one question.

A. And many others, I said.

The Court: That is an explanation.

Mr. Jamieson: He didn't say yes, your Honor.

The Court: He doesn't have to. His answer is a positive answer. He merely added that feature "as it is in others."

Mr. Jamieson: I move to strike that as not responsive.

The Court: That is not a ground in this court, it is only a ground in the State court, because of a recent statute, and we don't follow it.

Q. By Mr. Jamieson: Is there any additional function performed by the moving of the first valve off its seat in your structure than is performed by the moving of the first valve off its seat in the Blanchard? [333]

A. Is there any difference in my first valve and Blanchard?

(Testimony of Jack Lester Pinkerton)

Mr. Jamieson: Read the question.

(The question was read by the reporter.)

The Witness: Didn't I answer that?

Q. By Mr. Jamieson: No, you didn't.

A. The first valve, I said, was the same as Blanchard and many others.

Q. That wasn't my question. That was the previous question. I have asked another question since then,

The Court: It is the same question. Ask another question. I can't see any distinction between the two.

Q. By Mr. Jamieson: Does your valve do anything in addition to what Blanchard's does, the first one?

A. No.

Q. Now, taking the second valve, when the arm moves lower due to the lowering of the float in Blanchard's structure Exhibit 5, it moves the second valve off its seat, doesn't it? A. As it lowers down further, yes.

Q. What does that do in the way of work, what result does that accomplish?

A. That would open his second valve.

When you open the second valve that also closes the fuel shutoff valve, doesn't it? [334]

A. Depending on what he uses it for.

Q. If that is hooked up to it? A. Yes.

Q. Now, referring to yours, when your second valve is pulled off of its seat by the lowering of the arm, that will also shut the fuel shutoff valve if it is hooked up to it, won't it? A. That is correct.

Q. Will the lowering of the arm in your device perform any additional function than shutting the fuel

(Testimony of Jack Lester Pinkerton)

shutoff valve after it has progressed past the opening of the first valve?

A. It could be used for many things, but the operation of the second valve—could I do anything else besides shutting off fuel? Yes, anything pertaining to going through the line.

Q. If the second valve is hooked up to the fuel shutoff in your device, the lowering of the arm past the point where the first valve is opened to the point where the second valve is opened will not perform any additional function or work than opening the fuel shutoff valve, will it?

A. Do you mean closing it or opening it?

Q. I mean closing it. I am sorry.

A. Yes, it will close it.

Q. It will close it? [335] A. Yes.

Q. It doesn't do anything else besides close it?

A. That is all.

Q. So that the work that the second valve in your structure, Exhibit 12, does, and the work that the second valve in the Blanchard structure, Exhibit 5 does, is exactly the same, isn't it?

A. I would say the job was the same, yes.

Q. And the job is to shut that fuel shutoff valve?

A. If you are hooked to a fuel valve, yes.

Q. Assuming they are both hooked to a fuel shutoff valve, does your device do that job in the same way that Blanchard's device does it?

A. From the pressure of the boiler.

Q. Does it do it in the same way?

A. Will you repeat that, please? I want to see if I understand you.

(Testimony of Jack Lester Pinkerton)

(The question was read by the reporter.)

A. They use a diaphragm and we use a piston.

The Court: He is asking you for the result.

The Witness: Yes.

Q. By Mr. Jamieson: The result is exactly the same?

A. Yes.

Q. And the way that that result is accomplished is the same in both valves, isn't it? [336] A. Yes.

Q. Now, then, in your device you have made the second valve in two pieces so that there is an extension on it, haven't you?

A. You mean two valves? Each valve is made in one piece.

Q. Referring to Exhibit 12 you have two pieces instead of one like Blanchard has?

A. Two pieces between that.

Q. Between the valve and the pin?

A. Do I have two pieces between the valve—are you speaking of this pin (indicating)?

Q. If it isn't clear, I will reframe the question. Referring to Blanchard's device, Exhibit 5, the valve is inside and isn't seen, isn't that true?

A. The valve seat is.

Q. You can't see it, it is inside?

A. Yes, the valve seat.

Q. Between the valve seat and the pin in Blanchard's, there is just one piece or member, isn't there?

A. There is just one valve.

Q. One piece of mechanism? A. Yes.

Q. And between the valve seat and the pin in your device there are two pieces of mechanism, aren't

(Testimony of Jack Lester Pinkerton)

there, [337] whatever you call them, they are two pieces of mechanism? A. Yes.

Q. The one piece of mechanism in Blanchard's and the two pieces of mechanism in yours perform the same identical work, don't they?

A. Yes, they open the valve.

Q. And they do it in substantially the same way, too, don't they? A. I would say no.

Q. Well—

A. (Continuing) Yours is operating on one pin; we have two levers and two separate valves.

Q. When the valve is pulled off of its seat in the Blanchard device, Exhibit 12, it is pulled off its seat by movement of the pin in a direction away from the seat, isn't that true? A. Yes.

Q. And that pin is connected to the valve by a slot, isn't that true, in the end of the valve?

A. Connected to the pin?

Q. The pin is connected to the valve by a slot in the end of the valve? A. Yes.

Q. And in your device the two pieces are connected to the pin by a slot in the end of one of them. isn't that true? [338]

A. In the end of one of them? I don't understand.

Q. The two pieces. A. In the arm.

Q. Withdraw that question. I will start over again.

Between the second valve seat in your device and the pin there are two pieces, aren't there? A. Yes.

Q. And the connection between the pin and those two pieces is affected by a slot in one of the two pieces, isn't that true? A. Yes.

(Testimony of Jack Lester Pinkerton)

Q. And that slot contacts—correction. That pin contacts the edge of the slot and opens the valve, doesn't it?

A. It pulls the lever down, and the valve being hooked onto the lever opens the valve, yes.

Q. And it is the contacting of that pin on the edge of that slot that causes the valve to come off of its seat in your device Exhibit 12?

A. Do you mean the slot on the second arm?

Q. Yes. A. Yes.

Q. In Mr. Blanchard's device it is the contact of the pin on the slot of the second arm that pulls the valve off the seat? [339]

A. He hasn't got the second arm.

Q. I didn't say "second arm."

A. I am sorry I misunderstood.

Q. I will reframe the question. It is the contact of the pin on the slot of the second valve that pulls the valve off its seat in Blanchard's? A. Yes, yes.

Q. So in so far as that operation of a pin contacting a slot is concerned, the two structures operate exactly the same, don't they?

A. No. One slot is in the valve, and the other is on the arm.

Q. But they perform the work in exactly the same way, don't they?

A. Not exactly the same. You get the same results.

Q. They achieve that result in substantially the same manner, don't they? A. No. [340]

(Testimony of Jack Lester Pinkerton)

The Clerk: There is still one exhibit that was overlooked.

Mr. Fulwider: I offer F-5 in evidence.

The Court: All right.

The Clerk: Exhibit F-5 in evidence.

(The exhibit referred to, heretofore marked Defendants' Exhibit F-5, for identification, was received in evidence.)

Q. By Mr. Jamieson: Mr. Pinkerton, I will refer you to Exhibit H, which is a drawing of an assembly. Where was [341] that installed?

A. No place in particular. That was just an installation drawing.

Q. Was this made in 1935?

A. Whatever that date is.

Q. What was the occasion of making that drawing if it was not installed? You wouldn't make this for the Seal Beach installation, would you?

A. No. We made that because we was going to continue selling them.

Q. Was anything made from this drawing?

A. Do you mean installations?

Q. Yes. A. Yes.

Q. Where?

A. A job that was made for the Elmer Oil Company in Santa Fe Springs.

Q. Did you make a drawing like this for the Seal Beach installation?

A. No. This covered all installations for that particular style. If you had a series of boilers—

Q. This was made in 1935?

A. That is correct. The same as we made any drawing—

(Testimony of Jack Lester Pinkerton)

Q. Did you make a drawing of the 1933 installation afterwards; is that what this is? [342]

A. That was just our standard installation for this type of boiler, no particular job or nothing, the same as there are for our others.

Q. Then this doesn't purport to be a drawing of what was down there in '33? A. No, no.

Mr. Jamieson: That is all, your Honor.

Mr. Fulwider: I have two exhibits that I would like to introduce.

Mr. Jamieson: I have another witness.

The Court: What did you say?

Mr. Fulwider: That is all I have of this witness. Just one question.

Redirect Examination

By Mr. Fulwider:

Q. Did you make any sales other than the ones you mentioned to Mr. Jamieson on cross examination of this old low water system? A. Yes.

Q. Can you think of any of them now, with the names of the customers, between 1932 and, say, 1938?

A. I believe there was a chemical company, and I would have to get the name, over in Redondo. That is still in operation.

Q. How about the Petroleum Securities? [343]

A. That I thought we had referred to here. That is on its way here. Yes, Petroleum Securities, some time in '35.

Q. Where was that? A. In Kettleman Hills.

Mr. Fulwider: That is all.

The Court: All right. Step down.

(Witness excused.)

Mr. Fulwider: I would like to introduce this catalogue sheet of the Reliance Company, which illustrates this Exhibit A. I would like to call it A-1.

The Court: All right.

The Clerk: That is Defendants' O in evidence.

Mr. Fulwider: I thought we should mark it A-1.

The Clerk: A-1 in evidence.

(The document referred to was marked Defendants' Exhibit A-1, and was received in evidence.)

Mr. Fulwider: One other exhibit, a drawing of the old Exhibit F.

The Court: All right.

The Clerk: Defendants' O in evidence.

The Court: All right. [344]

* * * * *

ALVA G. BLANCHARD,

called as a witness by and on behalf of the plaintiff, in rebuttal, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jamieson:

Q. Mr. Blanchard, will you give the sales of your devices covered by the patent in suit from the beginning, year by year?

A. I don't have my records prior to 1942, but from '34 to '41 I would estimate that we have sold \$100,000 worth of them. Then in '42 our sales were \$9,600.02. In '43 our sales were \$17,269.63. In '44 our sales were \$27,956.40. In '45 they were \$41,159.05. In 1946 they were \$55,938.90. In '47 they were \$58,531.79. That would make a total of—

(Testimony of Alva G. Blanchard)

Q. I don't care about the total. Will you refer to patent No. 2,233,395 and tell me if there is an element in that patent of "means for supplying fluid under pressure to said compartment"? Do you find that?

A. Yes.

Q. Will you turn to the specifications and point out the part of the specifications and drawings that that element refers to? You may come down and illustrate it by the exhibit, if you wish. [345]

The Court: What are we looking at, which patent?

Mr. Jamieson: 2,233,395.

The Court: What figure are you looking at?

The Witness: We can start on figure 3.

The Court: Aren't you going over the same matter that you covered in his direct examination?

Mr. Jamieson: No, I am not. I wouldn't repeat anything.

The Court: All right.

Mr. Jamieson: I am not going over anything that I covered in my case on direct.

The Court: I just want to make sure.

Mr. Jamieson: I am trying to hurry. I am just as anxious to get through as you are, your Honor.

Q. By Mr. Jamieson: Will you please refer to the specifications and read the part of the specifications that refers to that element in each of the claims of that patent?

A. On page 2, the second column, beginning at line 17:

"In this instance, valve 75 is normally yieldingly held open by springs 77 but, should the water level in the boiler recede below the point where the valve 45 in the water supply conduit will be opened, as

(Testimony of Alva G. Blanchard)

above described, and beyond the point where the whistle 26 will be sounded, then, in that event valve [346] 13 in the master control unit will be opened and steam will pass through pipe line 25a into upper chamber 71 and lower chamber 72, with the result that diaphragm 73 will be flexed downwardly and valve 75 closed, thus shutting off the supply of fuel to the boiler."

Q. Is that the means that is referred to in that element of the claims in issue? A. It is.

Q. Will you show it and point it out on the drawings?

A. The first valve in a double valve assembly would be valve No. 12 in figure 2. And when it is drawn off from its seat the steam will pass through the seat 15 and the opening 16 into the connection 24 to which the whistle is attached.

A further recession of the water brings the pin 9 against the back of the last valve, which is No. 13, and it is moved from its seat 15 opening the opening 16 and steam passes from that opening on through the line 25a down to the top of the fuel shutoff valve with the connection 25a and the top of it, and that is the pressure that operates the fuel cutoff valve.

Q. Is that element of the claims present in this structure Defendants' Exhibit H? Show it to the court.

A. That element is not present in this drawing [347] dated 7-1-35, because the alarm body has only one valve in it, and it, therefore, could not be the last valve to open in a sequence of operations.

Q. Is that structure present in the defendants' device shown in Plaintiff's Exhibit 11? A. It is.

(Testimony of Alva G. Blanchard)

The Court: Where?

The Witness: That is a double valve assembly here (indicating).

The Court: Mark it with a red pencil on Exhibit 11. (Witness does as requested.)

The Court: Anything further?

Mr. Jamieson: I had a lot more, but I am trying to cut it out so I could finish here, your Honor, if I could just have a second.

The Court: All right.

Q. By Mr. Jamieson: Is the structure of your patent present in that structure that was described at the Seal Beach installation? A. No, it is not.

Q. Why not?

A. Because the fuel cutoff valve and the whistle operate simultaneously from the pressure emanating from a single valve.

Mr. Jamieson: Your Honor, before I ask the next [348] question I would like to ask a question of you.

At the close of the trial yesterday the defendant named six patents as the ones which he considered the closest references. I feel that it would be of considerable assistance to have this witness explain just those six patents. It might help your Honor considerably in your labors, and I would like to do that.

The Court: I have no objection. He didn't have an expert, and I thought you could do the explaining. If he can do it briefly, he can do it now.

Mr. Jamieson: I would like to have him explain the structure of those six patents.

(Testimony of Alva G. Blanchard)

Mr. Fulwider: I dislike to say I am not going to confine my argument to six patents. Your Honor asked us what the best ones were.

The Court: Let the record show that counsel will be given an opportunity to give their views of their interpretation of any of the patents. I asked them to bring it down to the best references, which is our custom in these cases. If he can do it briefly, all right.

Q. By Mr. Jamieson: Take the six patents that were pointed out by the defendant as his best references and explain any differences that you find between them and your structure. I will hand you copies of them for that purpose. I will give you copies of the patents to Parker, Sutherland, [349] Horridge, Spiller, Baldwin, and Wright.

A. Should I briefly outline what the evidence is?

Q. Just explain briefly how it works to the court to save time of reading it, and show the elements that are not present in each one of them.

Mr. Jamieson: There are no exhibit numbers on those, but they are listed there.

The Court: I will get it. Which one are you starting with?

The Witness: I will start with Parker.

Mr. Jamieson: It is No. 1 on the list. I have them listed by number. Parker is No. 1965,052 issued July 3, 1934.

The Court: Go ahead.

Q. By Mr. Jamieson: Explain briefly how it operates and any differences between it and your structure.

(Testimony of Alva G. Blanchard)

A. Well, it operates from a lever outside of the housing, which mechanically opens the valves controlling the water level alarm and fuel control valve.

Q. What is the number of each part you mentioned?

A. The number of the valves that it opens outside of the structure is No. 23, 38, and 27.

Q. What differences are there between that structure and the patents in suit?

A. The difference is that these valves that are operated by this lever are of a plug type and hard to turn, [350] and the only power to operate is the weight of the water that the float displaces on the inside, and the friction of the packing on the float rod extending through the housing and the glands of valves make it extremely doubtful if the device was ever used.

The distinguishing features as to claim 1 is that the valve, fuel cutoff valve 31 shown in figure 1, and also in figure 8, has no diaphragm or the equivalent. A piston ring, of course, is not a seal as there must be a certain amount of clearance between a cylinder and a piston, and this leakage would defeat the use of it in a fuel cutoff valve which must positively retain all of the pressure in it to keep the valve closed. Having no diaphragm it has no protective liquid for said diaphragm in the compartment.

The next difference is it can have no connections between said diaphragm and valve because there is no diaphragm or equivalent in the valve.

And then it has no means for supplying the fluid under pressure to the compartment for flexing said diaphragm, such as steam from the last valve to open in sequence in

(Testimony of Alva G. Blanchard)

downward movement of the float in a multiple valve structure within the housing of the steam source.

The next difference is that it has no manually operable means for relieving the fluid pressure on the said diaphragm.

In figure 31—I mean in figure 6 the body 31 has [351] a bleedoff protective—a bleedoff connection, and if the valve was bled there it would bleed any protective liquid that might be on the sealing unit if there was a sealing unit in the cylinder, and there is not.

That is the differences as to claim 1.

For claim 2, it has no means for its supplying fluid under pressure to said compartment to force said fluid against the pressure-responsive means. That is for the same reason that it has not in claim 1.

Then it has no manually operable means to relieve the fluid pressure in said compartment for the same reason that it didn't have in claim 1.

The Court: I don't think counsel expects you to compare the claims with yours. He wants you to compare the structure. Isn't that true?

Mr. Jamieson: Yes.

The Court: Go to the next one.

Mr. Jamieson: Just the features.

The Court: The features; not the comparison of the claims.

The Witness: All right.

The Court: What is the next one?

Q. By Mr. Jamieson: The next feature that is missing in that and is present in yours?

(Testimony of Alva G. Blanchard)

A. And it has no non-return means to prevent the [352] backflow of fluid from said compartment. That is to say, when the pressure on top of the cylinder in figure 1 on the top of the valve 31, and it shows in figure 8, also—when the pressure that is holding that valve down is removed, which it will be by the closing of the valve 38, the weight 35 immediately begins opening the valve and it exhausts out the top 29, and as it exhausts it turns on again, and the device never was supposed to be a fuel shutoff valve, but merely a valve to cut down on the fuel as long as the water was low.

The Court: What is the next one?

Q. By Mr. Jamieson: What is the next patent?

A. The next patent is Sutherland, C. W. Sutherland, No. 1,209,355.

Mr. Jamieson: That is No. 3 on the list, your Honor.

A. This is a fuel shutoff device—I mean a feed water regulating device, and the valve No. 12 stays normally open, except when the water raises too high. When the water raises too high the float 42 pulls the valve 38 from its seat and that allows pressure to come up the line 33, 32, 29, and into the chamber 19 above the piston. That pressure is exerted on the valve 10 and it closes it and stops the flow of water into the boiler. When the water level in the boiler declines the float 42 lowers and the valve 38 closes the seat, taking the pressure or eliminating the flow of [353] steam into line 33, 32, 29 chamber, and when no more steam can come into it the pressure that is in it exhausts out the opening 31 of the top, and allows the valve to open by itself.

The difference is that it is not in combination with a fuel supply conduit. It is not shown in connection with

(Testimony of Alva G. Blanchard)

supplying fuel to a boiler. It has no means for supplying fluid under pressure to said compartment for flexing said diaphragm, such as we employ as the last valve in a series of valve openings to supply this pressure.

Then it has no manually operable means for relieving the fluid pressure in the diaphragm, because the opening 31 is open all the time.

That is all of that.

The Court: The next one. I think you have described yours sufficiently. If you will just state the feature, you won't need to repeat those, because your comparison is apparent from the comparison that you made with the other two. What is your next one?

The Witness: Horridge, No. 930,860.

The Court: I have it.

The Witness: This is a pump governor and is supposed to control the pressure of water in a pump, and the steam passes through this valve to the pump from the boiler, and then at the top of it there is a connection that goes to the [354] discharge end of the pump, and the idea of it is to set the pressure that the pump is going to discharge by setting the screw 21 against the spring 23, and whatever pressure you have that set the pump will carry it because when the discharge pressure gets above the point you have set this spring the pressure will come over and come down line 25 and shut the steam off to the pump.

It differs from ours in that it is not used in a fuel supply line, and it has no means for supplying the fluid under pressure to said compartment for flexing the diaphragm, such as we employ. That is the last valve to open, and so forth.

(Testimony of Alva G. Blanchard)

The last thing is that it has no manually operable means for relieving the fluid pressure on the thing, because it is a direct opening and there is no bleed opening on it anywhere.

The next one is C. E. Spiller.

The Court: All right.

The Witness: It is the same type of device for controlling the pump pressure, and the main difference is that it has no—it is not in connection with any safety apparatus. It has no steam line to it, it has no means for supplying the fluid under pressure to the cylinder to operate it, such as we employ. It has no diaphragm or the equivalent on the piston to provide a sealing means so the valve can be closed. [355] And it has no manually operable means for relieving the pressure on it to make it possible to use it as a fuel cutoff valve.

I take it the next reference is—

Q. By Mr. Jamieson: What is the name of it?

A. Baldwin.

Mr. Fulwider: Did I mention House the other night?

Mr. Jamieson: You didn't mention House.

Mr. Fulwider: I should have. He is about as good as Parker.

The Court: All right.

The Witness: Baldwin is No. 716,982.

The Court: All right.

The Witness: The main difference on this device is as shown on figure 1 the alarm body housing is attached to the side of it like all the rest of these alarms we have been discussing, and from the valve assembly on the side there is a connection I down to the bottom of a normally

(Testimony of Alva G. Blanchard)

open feed water valve. The operation of the device is that as long as the water level is up—I mean that as long as the water level is slightly low the water will go into the boiler, but should the water level slightly raise the float *c* will pick up the arm *c*¹ by means of the attachment *c*² and move the lever which is pivoted at *c*⁵ until the pin *c*⁸ comes in contact with the back end of the slot *c*⁶, and it is releasably [356] held against that pin all the time by a spring *c*⁷. As this pin—

Q. By Mr. Jamieson: What are the differences between that and your structure?

A. The difference is that this is a single valve structure, because all of our claims read that the separate valves are opened in a downward movement of the float and in sequence. And this device has only one valve that opens on a downward movement of the valve.

Q. What is the number of that valve?

A. That valve is No. *c*²³. As the water drops that is the only valve that can be opened by the downward movement of the valve.

Then the next difference is that it has no plurality of valves in it with slots of various lengths in their end to determine the order in which they are opened.

That is the chief difference as regards our patent No. 2,199,611.

Now, if you consider it in regard to the other valve—I mean the other patent, No. 2,233,395, it is a different type of valve than we have heretofore discussed, but the main difference is that it has no diaphragm or effective seal for it to make it leak-proof. As a matter of fact, at opening *s*¹ in Fig. 2, it even provides a bleed opening for any excess pressure that slips by the piston to

(Testimony of Alva G. Blanchard)

escape [357] at that bleed opening. Then it has no non-return means to open, because the line I that leads from the valve c^3 has a steam chamber H above it, and in the operation and closing of that valve whenever it is closed the steam in this chamber H will condense into water and thereby allow the valve to open by itself.

The Court: What is the last patent?

The Witness: The last patent is Wright No. 668,302. The Wright device is a steam trap and it is supposed to be used on a steam line for collecting the moisture out of the line and dispelling it without dispelling any steam pressure, and the moisture comes through the opening in the first figure at the upper right at a figure indicated a^7 . The moisture falls down into the bottom of the chamber and comes up on the inside around the float to the level indicated by the dotted line w. Any further raising of that float will cause the center lever which is attached to one of three valves in the device to open, and if this opening is large enough to take care of the condensing water that is falling into the trap no other valves will open. If there is increase in the moisture that the trap is supposed to take care of the float will raise further and another arm will strike one of the pins on the float rod indicated in figure 3 by the pins b^7 coming in contact with the arm g^2 . When this happens another one of these valves are open to [358] permit a greater discharge of moisture, and then if the moisture content increases the float will naturally raise a little further, and then the third ground—

The Court: This is a series of openings?

The Witness: Yes. The third valve comes up against another lever indicated by the pin b^7 —no, the pin b^5

(Testimony of Alva G. Blanchard)

coming in contact with the arm h^2 . In addition to that there is another opening at the top, which is indicated in figure 1—no, figure 3,—no, that is a little figure on the side—figure 1 is right, at the top there is a manual means indicated c^7 by which a valve is opened to allow more moisture to escape in case the three valves after they are opened can't permit the moisture to escape, so that a person is supposed to go there and open that up too. All of these valves empty into a single opening indicated at the top of the trap by the numeral c^2 , and the moisture travels to the left then and sharply down and out the side of the trap indicated by the numeral a^8 .

Q. What are the distinguishing features?

A. The principal distinguishing feature is that it has no plug to close an opening, such as a plug as we show on our housing to close that opening, and then it has no plurality of outlet passages through this plug, and therefore it has no plurality of valves through said housing, because this plug that these valves are in in this device [359] are within the device and the outlet to all of these openings is merged into one, so that it has only a single outlet a^8 .

The Court: All right.

Mr. Jamieson: If counsel wants, and your Honor wants him to discuss House we will do that. Otherwise we will close.

The Court: You may pass it.

Q. By Mr. Jamieson: Have you finished with the last patent?

A. No. It has other differences. It has no slots in the ends of the valve stems and it has no slots of different

(Testimony of Alva G. Blanchard)

lengths to produce the successive movements of the valves. And the whole device is not intended, nor could it accomplish the results that our patent does. That concludes Wright.

The Court: All right.

The Witness: Is there another one?

Mr. Jamieson: No. That is all.

Mr. Fulwider: No cross.

The Court: Step down.

All right, gentlemen, anything further?

Mr. Jamieson: No. The plaintiff rests.

[Endorsed]: Filed May 3, 1948. Edmund L. Smith, Clerk. [360]

[Endorsed]: No. 11991. United States Circuit Court of Appeals for the Ninth Circuit. Alva G. Blanchard, Appellant, vs. J. L. Pinkerton, Inc., and J. L. Pinkerton, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 27, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11,991

ALVA G. BLANCHARD,

Appellant,

vs.

J. L. PINKERTON, INC., a corporation, and
J. L. PINKERTON,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR THE CONSIDERATION THEREOF TO BE PRINTED, UNDER SUBDIVISION 6 OF RULE 19 OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Clerk of Said Court:

Sir: The points on which the appellant intends to rely on the appeal in the above case are as follows:

1. Since validity of the patents in suit and title thereto in appellant were found by the Court below and since no cross-appeal was filed herein by the appellees, these matters are not in issue on the appeal in this case.

2. Therefore the only main issue on this appeal is the infringement of the claims in issue of the patents in suit by the accused structures which the appellees admitted manufacturing, using and selling before the Complaint was filed herein.

3. The patents in suit are pioneer patents, or represent distinct steps forward in the art, and as such, are entitled to a liberal interpretation and a broad range of equivalents.

4. The appellees' accused structures shown in appellant's Exhibits 8, 9, 10, 11 and 12 are infringements of the claims in issue of the patents in suit, namely: Claims 1, 2 and 5 of Patent in suit No. 2,199,611 and Claims 1, 2 and 3 of Patent in Suit No. 2,233,395.

5. That the United States District Court for the Southern District of California, Central Division, erred:

(1) In ordering, adjudging and decreeing that the Complaint be dismissed.

(2) In failing to order, adjudge and decree that, without the license or consent of plaintiff, the above named defendants have jointly and severally, or jointly or severally, within the said Southern District of California, Central Division thereof, prior to the commencement of this suit, manufactured, offered for sale, sold, offered for use, used and caused to be used valve operating structures or devices which embody or contain the patented inventions disclosed and claimed in and by Letters Patent in suit No. 2,199,611, and particularly by Claims numbers 1, 2 and 5 of said Letters Patent No. 2,199,611.

(3) In failing to order, adjudge and decree that, without the license or consent of the plaintiff, the above named defendants have jointly and severally, or jointly or severally, within the said Southern District of California, Central Division thereof, prior to the commencement of this suit, manufactured, offered for sale, sold, offered for use, used and caused to be used safety apparatus for boilers or devices which embody or contain the patented inventions disclosed and claimed in and by Letters Patent in suit

No. 2,233,395, and particularly by Claims numbers 1, 2 and 3 of said Letters Patent No. 2,233,395.

(4) In failing to order, adjudge and decree that all of the elements of Claims 1, 2 and 5 of Letters Patent No. 2,199,611 of the mechanical equivalent thereof are found in defendants' accused structures.

(5) In failing to order, adjudge and decree that all of the elements of Claims 1, 2 and 3 of Letters Patent No. 2,233,395 or the mechanical equivalent thereof are found in defendants' accused structures.

(6) In failing to order, adjudge and decree that the defendants have infringed patent in suit No. 2,199,611, particularly Claims 1, 2 and 5 thereof.

(7) In failing to order, adjudge and decree that the defendants have infringed patent in suit No. 2,233,395, particularly Claims 1, 2 and 3 thereof.

(8) In failing to order, adjudge and decree that the accused devices shown or embodied in plaintiff's Exhibits 8, 9, 10, 11 and 12 infringe patent in suit No. 2,199,611, particularly Claims 1, 2 and 5 thereof.

(9) In failing to order, adjudge and decree that the accused devices shown or embodied in plaintiff's Exhibits 8, 9, 10, 11 and 12 infringe patent in suit No. 2,233,395, particularly Claims 1, 2 and 3 thereof.

(10) In failing to order, adjudge and decree an injunction upon Letters Patent No. 2,199,611, particularly Claims 1, 2 and 5 thereof.

(11) In failing to order, adjudge and decree an injunction upon Letters Patent No. 2,233,395, particularly Claims 1, 2 and 3 thereof.

(12) In failing to order, adjudge and decree that plaintiff is entitled to costs.

(13) In ordering, adjudging and decreeing that defendants shall recover and have execution for their costs and disbursements herein.

(14) In ordering, adjudging and decreeing that none of the Claims in suit or either of the above mentioned patents, No. 2,199,611 or 2,233,395, is infringed by the accused devices like plaintiff's Exhibit 12 herein, or by the accused devices shown in plaintiff's Exhibit 11 herein, or by the accused devices shown on the right hand side of each of plaintiff's Exhibits 8, 9 and 10 herein that were made, used or sold by either of the defendants herein prior to the filing of the Complaint herein.

And that the United States District Court for the Southern District of California, Central Division, erred in making the following Findings of Fact and Conclusions of Law entered in this action on June 7, 1948, to wit:

FINDINGS OF FACTS

II.

Plaintiff is restricted to his said filing date of October 14, 1935, as the date of invention for each of said patents.

III.

The specification of U. S. Patent No. 2,233,395 defines the invention as an improvement in safety devices for boilers, which, in view of the prior art must be limited to a safety device for boilers which produce automatic safety.

IV.

The claims of U. S. Patent No. 2,233,395 all describe, and must be specifically limited to, the fuel valve assembly described in the specification and depicted in the drawings. Claims 2 and 3 are by their terms limited to "non-return means to prevent back-flow of fluid from said com-

partment." The only "non-return means" disclosed or contemplated in said patent is the check valve 79 seen in Figure 6, and the claims are limited thereto. Claim 1, although it does not specifically recite the non-return means of Claims 2 and 3, must, in view of the specification and prior art be considered to include said check valve 79 by reference. As so limited said claims are valid.

V.

The automatic safety of the '395 patent apparatus is achieved by the action of the check valve 79, which holds the fuel valve 75 closed until the relief valve 78 is manually opened. This function of the check valve can only be accomplished by placing it below the level of the liquid standing in compartment 72 and the inlet to said compartment, so that when the check valve closes, it will trap only liquid in said compartment. Thus when the check valve has been closed the fuel valve 75 is locked in closed position, and can only be opened by manually opening relief valve 78 to permit the springs 77 to force diaphragm 73 upwardly to expel liquid from compartment 72.

VI.

The element appearing in all of said '395 claims, "means for supplying fluid under pressure to said compartment" must be read in the light of the specification to include any conduit means such as pipe 25a shown in the Blanchard drawings.

X.

The evidence shows conclusively that in late 1932 or early 1933 the defendant Pinkerton manufactured, and installed on a lease of the Continental Oil Company at Seal Beach, California, the boiler alarm and fuel valve control structures shown in Defendants' Exhibits E. E-1, E-2, F, F-1, F-2, F-3, F-4 and O. The details of said

structures are shown by said exhibits and were fully identified through the testimony of defendant Pinkerton and of disinterested witnesses Brown, Thorton and Dolarheid, all of whom took part in said installation at Seal Beach, the manufacture of said apparatus being conclusively shown by disinterested witnesses Harvill, Beck and Robson. The testimony of all of said witnesses in all respects is found to be clear, satisfying and convincing beyond any reasonable doubt. The dates on the drawings illustrating Exhibits E and F are found to have been fully proved.

XI.

The accused devices manufactured by defendant Corporation are substantially the same as the early devices manufactured by Pinkerton and installed in the said Continental Seal Beach lease in late 1932 or early 1933, and insofar as the claims of the Blanchard '395 patent are concerned, said devices are identical. Both the 1932-33 devices and the accused devices included in a safety apparatus for boilers, the combination of a fuel supply conduit, a valve in said conduit, means for yielding holding said valve open, a cylinder, a piston responsive to pressure in said cylinder arranged to close said valve, means for supplying fluid under pressure to said cylinder to force said fluid against the piston, and a manually operable valve to relieve the fluid pressure in said cylinder, said piston having a body of liquid thereon as a result of condensation of the steam in the inlet line. Neither of said devices employed or employs a check valve or any other device, structure or means which can respond to or be considered the equivalent of the "non-return means" recited in Claims 2 and 3 of said '395 patent.

XII.

None of the claims of the '395 patent are or have been infringed by any device or apparatus made, used or sold

by the defendants or either of them prior to the filing of the Complaint herein.

XIII.

Each of the claims in suit calls for and is limited to a single cross-pin operating a plurality of alligned needle valves, each with a slot in its valve stem, the slots being of different size and the valves being operated by a float lever. Each of the claims must be strictly limited to the precise structure illustrated in the patent, and as so limited is valid.

XVII.

The accused devices of defendants do not have slots of different sizes in their valves, nor do they have a single pin extending through slots in the valves or their valve stems. The defendants' structure uses separate pins located at two different places to operate two separate valves in a manner different from that disclosed or claimed in said '611 patent.

XVIII.

The combination of the loose ring 52 pivotally connected to the valve shown in Exhibit D is not the equivalent of a valve stem and slot as shown or claimed by the '611 patent, nor is it the equivalent of such a valve and slot in two parts. The separate pin of the accused structures are not the equivalent of the cross-pins shown or claimed in the '611 patent. Said pins of defendants do not comprise and may not be considered to be the equivalent of a single pin in two parts.

XIX.

The means employed in the accused devices for achieving sequential operation of the valves therein are entirely dissimilar from those shown in the '611 patent, and consequently none of the '611 claims are or have been infringed by any devices made, used or sold by the defend-

ants or either of them prior to the filing of the Complaint herein.

XX.

The accused devices are merely normal variations of the Reliance valve and the early Pinkerton structure open to any member of the general public.

CONCLUSIONS OF LAW

2.

None of the claims of either of said patents in suit is infringed by any structure or device made, used or sold by defendants or either of them prior to the filing of the Complaint herein.

3.

The complaint should be dismissed.

4.

Defendants should be allowed their costs and disbursements herein.

Pursuant to subdivision 6 of Rule 19 of Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit, the appellant herein hereby designates the following parts of the record which he thinks are necessary for the consideration of the above points and which should be printed by the Clerk, namely:

* * * * *

Respectfully submitted,

HAMER H. JAMIESON

Attorney for Appellant

Address: Security Building Los Angeles 13,
California

[Affidavit of Service by Mail.]

[Endorsed]: Filed Aug. 2, 1948. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause]

STIPULATION AND ORDER CORRECTING
RECORD

It is hereby stipulated by and between the above parties through their respective counsel that the following corrections be made in the Reporter's Transcript of the testimony taken at the trial of this case:

Page 106, lines 18, 21 and 24, change "piston" to—
Pinkerton—

Page 167, line 5, change "1933" first occurrence to—
1932—, and change "late" second occurrence to—early—

Page 172, line 25, change "1942" to—1932—

Page 176, line 10, change "heater" to—meter—

Page 258, line 17, change "radio" to—radial—

Page 268, line 11, change "table" to—cable—

Page 279, line 21, after "since" insert —, until—

and that the Clerk be authorized to make said corrections in the record on appeal before sending it to the printer.

Dated at Los Angeles, California, this 9th day of August, 1948.

HAMER H. JAMIESON

Attorney for Appellant

FULWIDER & MATTINGLY

By Robert W. Fulwider

Attorneys for appellees

Approved and so ordered this 13th day of August, 1948.

WILLIAM DENMAN

United States Circuit Judge

[Endorsed]: Filed Aug. 13, 1948. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause]

AMENDMENT TO DESIGNATION

The appellees above-named hereby amend their designation of the record to be printed as follows:

By deleting French patent No. 375,308 from Exhibit I.

This amendment is made to obviate the necessity of a translation of said patent since it is not necessary to a consideration of the appeal. The patent was cited as a file wrapper reference, but was not relied upon by the Patent Office.

Dated at Los Angeles, California, this 30th day of September, 1948.

FULWIDER & MATTINGLY

By.....

Attorneys for Appellees.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Oct. 4, 1948. Paul P. O'Brien,
Clerk.